



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- An early end to the tenancy pursuant to section 56 of the *Act*; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and their agent (the “Agent”), who provided affirmed testimony. No one attended on behalf of the Tenant. The Landlord and their Agent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application, notice of the hearing, and the documentary evidence intended to be relied upon by the Landlord. As no one attended the hearing on behalf of the Tenant, I confirmed service of these documents as explained below.

The Agent testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and all of the documentary evidence before me, except for an e-mail dated April 18, 2020, was posted to the door of the rental unit on April 24, 2020, in the presence of a witness. In support of this testimony the Agent pointed to a witnessed Proof of Service document in the evidence before me. The Agent stated that the video evidence was contained on a USB and that the remainder of the documentary evidence, including photographs, were printed. As a result of the above, I am satisfied that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and all of the documentary evidence before me, except for an e-mail dated April 18, 2020, was posted to the door of the rental unit on April 24, 2020. As a result, and pursuant to section 90 (c) of the *Act*, I find that these documents were deemed served on the

Tenant on April 27, 2020, three days after they were posted to the door of the rental unit.

As a result, I find that the Tenant was aware of the date and the time of the hearing, the Application and the evidence against them, and had an opportunity to appear at the hearing in their defense. I have therefore accepted the documentary evidence before me from the Landlord for consideration in this matter in accordance with the Rules of Procedure, with the exception of the email dated April 18, 2020, which was not served on the Tenant. I have therefore excluded this email from consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to an early end to the tenancy and an Order of Possession for the rental unit pursuant to section 56 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Agent stated that the month-to-month tenancy began in February of 2017, that only the Tenant listed in the Application is authorised to reside in the rental unit, and that rent in the amount of \$1,100.00 is due in rent each month. The Agent also stated that the Tenant rents a basement suite in the Landlord's home, and that the Landlord, the Agent, and the Agent's grandfather reside in the upper portion of the home, directly above the basement suite.

The Agent stated that the Landlord is seeking to end the tenancy early pursuant to section 56 of the *Act* as:

- The Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property;

- The Tenant or a person permitted on the residential property by the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant;
- The Tenant or a person permitted on the residential property by the Tenant has put the Landlord's property at significant risk;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has caused or is likely to cause damage to the Landlord's property;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- The Tenant or a person permitted on the residential property by the Tenant has caused extraordinary damage to the residential property.

The Agent stated that the Tenant and their guests smoke on the property, often while significantly impaired by drugs, and that they frequently disconnect the smoke detectors in the rental unit to enable smoking, which poses a very significant fire safety risk to the Landlord and their family, who reside upstairs, as well as the property itself. The Agent stated that the smoking also significantly affects their and their grandfather's ability to use and enjoy their home, as they and their grandfather reside in the home with the Landlord and have health conditions which are significantly exacerbated by smoke. As a result, the Agent stated that neither they or their grandfather can use and enjoy many interior portions of their home or any exterior portion of the home, resulting in serious jeopardy to their health and a significant interference of their quiet enjoyment.

The Agent stated that the Tenant and many of their guests are well known to police and that police frequently attend the rental unit due to illegal activity, which significantly and unreasonably disturbs the Landlord and their family. The Agent stated that stolen property has been recovered by police from the Tenant's rental unit and the rental property, including a stolen vehicle, that the police have been involved due to fights and harassment in the rental unit, and that and that the illegal activity has resulted in damage to the rental unit, such as broken windows. The Agent stated that the Landlord's family members have been threatened with a baseball bat by one of the Tenant's guests and that the Tenant's guests are often aggressive and under the influence of drugs. As a result, the Agent stated that they, the Landlord, and the rest of the Landlord's family are frightened for their safety.

The Agent stated that the Landlord and their family are continuously disturbed on a daily basis, and at all times of the day and night, by the Tenant's loud music, the fire alarm, police attendance, and the coming and going of a very significant number of guests. The Agent stated that a neighbour who is building a home has a 24 hour security guard on their property, who advised them that last night, 24 people attended the Tenant's rental unit. The Agent stated that these disturbances make sleeping and enjoying the property nearly impossible for the Landlord and their family members.

The Agent also stated that there is extraordinary damage to the rental unit, as all of the windows to the rental unit have been broken and there are holes in many of the walls.

The Agent stated that it would be unreasonable, or unfair to the Landlord or other occupants of the residential property, including themselves and their disabled grandfather, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect as a One Month Notice to End Tenancy for Cause ("One Month Notice") cannot currently be issued due to the state of emergency and the disturbances by the Tenant and their guests are extreme, constant, and occur at all times of the day and night. The Agent stated that they also fear for their own safety due to the illegal activity on the property and the types of guests attending the rental unit, the significant safety risk posed to themselves and the Landlord's property by the Tenant's frequent disconnection of the smoke detectors, and the significant COVID-19 risk posed to the Landlord and the Landlord's family due to the significant number people attending the property on a daily basis.

The Landlord and Agent submitted documentary evidence in support of their testimony, including videos, photographs, affidavits, police file numbers, and a receipt for smoke detector batteries.

No one appeared on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

As there is no evidence or testimony before me to the contrary, I accept the testimony of the Agent and the documentary evidence before as fact.

Based on the uncontested and affirmed testimony of the Agent, and the significant and compelling documentary evidence before me, I am satisfied that:

- The Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property;
- The Tenant or a person permitted on the residential property by the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant;
- The Tenant or a person permitted on the residential property by the Tenant has put the Landlord's property at significant risk;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has caused or is likely to cause damage to the Landlord's property;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;

Given the physical safety concerns of the Landlord and their family, the significant fire safety risk posed by smoking and the frequent removal of the fire detector, the nature and frequency of the disturbances to the Landlord and other occupants of the rental property by the Tenant and their guests and the fact that the Landlord cannot currently serve and enforce a One Month Notice due to the state of emergency, I find that it would be both unreasonable and unfair to the Landlord and the other occupants of the property, to wait for a One Month Notice to take effect.

As a result, I find that the Landlord is entitled to an early end to the tenancy pursuant to section 56 of the *Act* and I therefore grant the Landlord an Order of Possession for the rental unit, **effective Two (2) Days after service on the Tenant.**

Pursuant to section 72 of the *Act*, I find that the Landlord is entitled to recovery of the \$100.00 Filing fee. Pursuant to section 67 of the *Act*, I therefore grant the Landlord a Monetary Order in the amount of \$100.00. In lieu of serving and enforcing this Monetary Order, the Landlord is authorised to withhold \$100.00 from any security or pet damage deposit paid by the Tenant and held by the Landlord, should they wish to do so.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the Landlord effective **Two (2) Days after service of this Order** on the Tenant. The Landlord is

provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this Monetary Order, the Landlord is authorised to withhold \$100.00 from any security or pet damage deposit paid by the Tenant and held by the Landlord, should they wish to do so.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 12, 2020

Residential Tenancy Branch