



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On April 23, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an early end of tenancy and an order of possession for the rental unit.

The matter was set for a conference call hearing. The Landlords and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence that is before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Background

The Landlords and Tenant testified that the tenancy began on August 1, 2015 as a one-year fixed term tenancy that has continued thereafter on a month to month basis. The parties testified that rent in the amount of \$1,215.00 is due by the first day of each month. The parties testified that the Tenant paid the Landlords a security deposit of \$550.00.

The Landlord testified that on March 30, 2020 she attended the rental property and observed a distillery in the yard. The Landlord testified that she told the Tenant that a distillery is not permitted on the property and to stop using the Landlords hydro electricity. She testified that the Tenant told her he would remove the distillery.

The Landlord testified that on April 16, 2020 she returned to the rental property and observed the distillery in a garage that is rented to another Tenant/ occupant of the rental property. The Landlord provided one photograph of the part of the distillery in the garage that was taken on that date. The Landlord testified that they do not know whether or not the distillery was operational on April 16, 2020.

The Landlord submitted that the distillery presents a fire hazard and the Landlord is concerned that the Tenant will cause damage to the building.

In response to the Landlords' testimony, the Tenant provided testimony that on March 29, 2020 he set up a still in the back yard and he was not aware that doing this required a permit.

The Tenant submitted his intention was to produce food grade ethanol to use to make hand sanitizer and to keep some for personal consumption. The Tenant submitted that he donated some for use as hand sanitizer as a positive way to contribute to his community.

The Tenant submitted that he has significant training as a scientist and performed extensive research on the safe operation of a still. He submitted that he has a Bachelor of Science degree with a focus on chemistry and physics. The Tenant submits that he set up the still in a way that caused no threat to the property or to anyone's safety.

The Tenant testified that he discontinued use of the still immediately on March 30, 2020 when instructed to do so by the Landlord. The Tenant testified that another occupant, Mr. B.B. offered to let him store his equipment in a garage he rents from the Landlord. The Tenant testified that he stored his equipment in the garage.

The Tenant testified that on April 17, 2020 the police called him and informed him that he requires a permit for distillation. The Tenant testified that he informed the police that his still equipment was in storage.

The Tenant produced a witness, Mr. B.B. who provided affirmed testimony that he is a resident of the rental property and he overheard the conversation between the Landlord and Tenant. He testified that he offered to let the Tenant use his garage to store the still equipment. Mr. B.B. testified that the still was not operational while it was being stored in the garage.

Analysis

The Landlord has applied to end the tenancy under section 56 of the Act.

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial Order provides that a Landlord must not issue a notice to end tenancy while the Order is in effect. The Order provides that the director must not grant an order of possession under section 55(1) or 55(2) of the Act. A Landlord must not file an order of possession in the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 of the Act.

Section 56 of the *Act* states that a Landlord may make an application for dispute resolution to request an order to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 and granting the Landlord an order of possession in respect of the rental unit. If an order is made under this section, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, the Tenant or a person permitted on the residential property by the Tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property,
- 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, or
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, and,
- it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

Based on the testimony and evidence of the Landlord and Tenant, I make the following findings:

I find that the Tenant was operating a still on the residential property. While the Landlord did not provide any documentary evidence such as a relevant statute or bylaw to prove that the activity is illegal, the evidence before me suggests that the activity is regulated because a permit is required.

I have considered the jeopardy that the activity of having a still presents to the Landlord or other occupants. I am mindful that the still was observed to be set up in the yard, and not within a building on the rental property. The Tenant provided testimony that he is experienced and mindful of how to distill with no fire risk. I find that there is insufficient evidence from the Landlord that the activity created any interference with the quiet enjoyment of other occupants and there was no evidence of fire damage or physical damage done to the Landlords' property.

I find that the Tenant took down the still on March 30, 2020 after the Landlord directed him to take it down. The Landlord applied for dispute resolution 24 days later after viewing the still equipment located in a garage on April 16, 2020.

I find that there is insufficient evidence from the Landlord to establish that the Tenant used the still on the residential property after March 30, 2020. I find that the Tenant complied with the Landlords' direction on March 30, 2020 to dismantle the still. I find that the Tenant has not engaged in any other behaviour sufficient to end the tenancy on an urgent basis since that time. While the Landlords submitted that they are concerned about an ongoing fire risk, I find that the Tenant has not presented any risk to them since complying with their direction on March 30, 2020.

I find that the Tenant is now aware that a permit is required to operate a still and is aware that the Landlord will not permit the use of a still on the rental property. I find that any risk that may have been present by operation of the still, stopped on March 30, 2020.

I find that there is insufficient evidence from the Landlord to justify an early end of the tenancy on an urgent basis.

The Landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed.

Conclusion

I find that on March 30, 2020 the Tenant complied with the Landlords direction to dismantle a still on the property and any risk that may have been present by operation of the still, stopped on March 30, 2020.

The Landlord's application of April 23, 2020 for an early end of tenancy and an order of possession for the rental unit is dismissed in its entirety.

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 26, 2020

Residential Tenancy Branch