



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 the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:20 am in order to enable the tenant to call into this hearing scheduled for 11:00 am. The landlord and her partner ("**MH**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, MH, and I were the only ones who had called into this teleconference.

The landlord testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on May 14, 2020. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on May 19, 2020, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting November 1, 2014. Monthly rent is \$925 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$450, which the landlord continues to hold in trust for the tenant. The tenancy agreement contains a non-smoking clause in the addendum.

The rental unit is a basement suite. The landlord lives in the upper unit. MH often stays in the upper unit. The landlord rented a room out in the upper unit to a roommate ("HC"). HC moved out on May 28, 2020 (the date of the hearing) due to the conduct of the tenant.

The landlord testified that the tenant smokes marijuana in the rental unit frequently. She testified that the smell of marijuana enters the upper unit, via a shared duct system, and lingers. She testified that the smell of marijuana gives her severe headaches, and she is forced to leave the upper unit whenever the tenant smokes marijuana in the rental unit. She testified that she is unable to sleep when the upper unit smells of marijuana.

The landlord has provided the tenant with three warning letters regarding his use of marijuana in the rental unit (on December 8, 2019, May 4, 2020, and May 8, 2020). She testified that the tenant has not ceased his conduct, and that he smoked marijuana in the rental unit the night before the hearing.

The landlord provided a "smoking journal" she kept, outlining the times the tenant smoked marijuana in the rental unit, and she felt its effects. The smoking journal records incidents on February 26 and May 1, 4, 6, 10 (two occasions), 11 (two occasions), and May 12, 2020.

The landlord provided a written statement of MH regarding the tenant's marijuana usage. It corroborates the dates contained in the landlord's smoking journal.

The landlord testified that the tenant's marijuana usage has increased since the COVID pandemic started. She testified that when the lockdown first started, he smoked marijuana up to three times a day in the rental unit.

The landlord also provided a written statement of HC. HC wrote that she is a retired police constable. She wrote that she is able to tell the difference between the smell of smoked marijuana and dried or fresh marijuana. She wrote that the odour in the upper unit emanating from the rental unit is that of smoked marijuana and not dried or fresh marijuana.

HC wrote that, on one occasion, the smell of marijuana filled her room around 11:00pm when she was trying to sleep. She had to get out of bed, get dressed, and go for a drive

so as to give the smell time to dissipate. She wrote that the smell persisted in her room after a 30-minute drive. She wrote that she has PTSD as a result of being a police officer, and that it is important to her to look after her sleep regime in order to maintain her mental health. The tenant's use of marijuana prevents her from doing this.

HC wrote that she has chosen to move out of the upper unit, and that the issue with the tenant smoking marijuana was "a major contributing factor" when coming to this decision.

Analysis

Early Termination of Tenancy applications are governed by section 56(2) of the Act, which reads:

- (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
 - (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) 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
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
 - (v) caused extraordinary damage to the residential property, and
 - (b) 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 [*landlord's notice: cause*] to take effect.

Rule of Procedure 6.6 sets out the standard which I am apply when assessing whether to grant the relief sought in an application. It states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord must satisfy me, on a balance of probabilities, that the tenant's conduct meets the requirements set out in section 56(2) of the Act.

After considering the evidence presented and the testimony of the landlord, I find that the landlord has discharged her evidentiary burden and demonstrated that an order for an early end to the tenancy is required.

I accept the uncontroverted testimony of the landlord and the evidence contained in the written statements of MH and HC. I find that the tenant frequently smoked marijuana in the rental unit and that the smell of marijuana would enter and linger in the upper unit.

I accept the landlord's testimony that the smell of marijuana causes her severe headaches and makes it very difficult for her to sleep at night. I accept HC's written evidence that the smell caused by the tenant's use of marijuana disrupted her sleep and was a "a major contributing factor" in her decision to move out of the upper unit.

I find that the tenant's continued use of marijuana "significantly interfered with or unreasonably disturbed" both HC and the landlord. As such, I find that the conditions at section 56(2)(a)(i) are met.

I also find that it would be unfair to the landlord to wait for a notice to end the tenancy under section 47. Such a delay would not be appropriate given:

- 1) the fact that the landlord gave the tenant multiple warnings regarding the use of marijuana in the rental unit;
- 2) the ongoing nature of the disturbance caused by the tenant;
- 3) the tenant's use of marijuana in the rental unit causes the landlord headaches and sleep issues; and
- 4) that the severity of the problem is so great that it caused HC to move out of the upper unit, depriving the landlord of rental income.

As such, I find that the landlord has satisfied the requirements of section 56(2)(b).

Accordingly, the landlord's application is successful, and I issue an order of possession against the tenant effective two days after the landlord serves him with it.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover their filing fee from the tenant. Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of the filing fee. She must deal with the balance of the security deposit in accordance with the Act.

Conclusion

Pursuant to section 56 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order by the landlord.

Per section 4(3) of the *Residential Tenancy (COVID-19) Order*, MO 73/2020 (*Emergency Program Act*) made March 30, 2020 (the “**Emergency Order**”), a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated).

The order of possession granted above *is* issued pursuant to section 56 of the Act.

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 28, 2020

Residential Tenancy Branch