



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Canadian Mental Health Assoc. for the Kootenays and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This expedited hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56.

MT and JC attended as agents for the landlord (“the landlord”). PD represented the tenant (“the representative”).

Both parties had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process

The landlord provided affirmed testimony that the landlord service the tenant with the Notice of Hearing and evidentiary package by registered mail sent on April 24, 2020 thereby effecting service under section 90 five days later, on April 29, 2020. The landlord provided the tracking number referenced on the first page and a copy of the receipt in support of service. The representative acknowledged service and stated that the tenant chose not to attend the hearing.

Further to the testimony of the parties, the submitted documents and the acknowledgement of the representative, I find the tenant was served as required under the Act on April 29, 2020.

Issue(s) to be Decided

Is the landlord entitled to an order for early termination of a tenancy pursuant to section 56?

Background and Evidence

The landlord stated that the tenancy agreement began on October 1, 2019 for monthly rent of \$291.00 payable on the first of the month. The tenant paid a security deposit of \$267.00 at the beginning of the tenancy which is held by the landlord.

The landlord provided testimony and substantial evidence including signed witness statements from occupants in the building, as well as audio files.

The landlord testified that the tenant started drinking excessively shortly after moving in to the unit. While drunk, the tenant repeatedly played loud music, urinated in common spaces, yelled, screamed and swore.

The landlord issued three letters of warning, copies of which were submitted as evidence. The letters outline the objectionable behaviour and demand that the tenant cease. The letters are dated April 24, 2020, April 8, 2020 and April 16, 2020.

The landlord testified that the behaviour of the tenant has escalated so that the police are called to the building "every few days". In the final letter of April 16, 2020, it is stated in part as follows:

One again we have received multiple complaints regarding unacceptable behaviour, loud yelling inside your unit as well as in the common hallway over the past weekend. The multiple reports of disturbance include loud banging noises, yelling at all hours of the day and night, friends and guests causing a disturbance and food all over the hallway. Police were once again called to de-escalate the situation, remove your guests, and put you back into your unit.

The landlord testified that there are ten units in the building in which the tenant resides; written complaints from four of the occupants were received and submitted as evidence.

The landlord testified the behaviour of the tenant has worsened, is more frequent, more often involves the police and includes threats of violence.

The landlord relied on section 56(2)(a)(i), that is, 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 landlord asserted that it would be unreasonable to require the landlord to issue a One Month Notice and requested an Order of Possession.

Analysis

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

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 this case, the onus is on the landlord to establish on a balance of probabilities that he is entitled to an order for an early end of the tenancy.

To end a tenancy early, the landlord must prove that the tenant has done something contrary to section 56 **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause (“One Month Notice”).

Section 56 of the Act provides as follows [emphasis added]:

Application for order ending tenancy early

56 (1) *A landlord may make an application for dispute resolution to request an order*

- a. *ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and*
- b. *granting the landlord an order of possession in respect of the rental unit.*

(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

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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The landlord relied on section 56(2)(a)(i), that is, 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.*

Based on a review of the testimony and evidence, I find that the landlord has met the burden of proof on a balance of probabilities under section 56(2)(a)(i), that is, that the tenant has significantly interfered with or unreasonably disturbed other occupants.

I also find the landlord has met the burden of proof on a balance of probabilities that 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. I find the landlord has established entitlement to an order for early termination of tenancy and an Order of Possession effective 1:00 PM on May 31, 2020, as requested.

In reaching this conclusion, I have given significant weight to the testimony and written evidence submitted by the landlord. The landlord's testimony was supported by written statements from several witnesses and three formal notice letters to the tenant. The landlord and the witness statements impress me as candid, forthright, and credible evidence establishing that the tenant increasingly engaged in unacceptable disturbing behaviour progressively requiring the intervention of the police more frequently. I accept their evidence that the tenant has progressed to threatening physical safety of others.

Accordingly, I grant an order ending the tenancy at 1:00 PM on June 30, 2020 as requested by the landlord. I issue an Order of Possession directing that the tenant and all occupants deliver up peaceful possession of the unit on or before 1:00 PM on June 30, 2020.

Conclusion

I grant an order ending the tenancy effective at 1:00 PM on June 30, 2020. I also grant an Order of Possession directing that the tenant and all occupants deliver up peaceful possession of the unit on or before that time. This Order must be served on the tenant. This Order may be filed in the British Columbia Supreme Court and enforced as an Order of that court.

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: June 16, 2020

Residential Tenancy Branch