



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an early termination of tenancy and Order of Possession, pursuant to section 56.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:16 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and the owner of the subject rental property attended the hearing and were 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 and the owner and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were each served with her application for dispute resolution via registered mail on June 10, 2020. Canada Post receipts for same were entered into evidence. I find that the tenants were deemed served with the landlord's application for dispute resolution on June 15, 2020, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Amendment

The landlord testified that she rented the subject rental property from the owner of the property and subleased the subject rental property to the tenants. On the application for dispute resolution the landlord was listed as "agent or lawyer", and the owner was listed as the landlord. I informed the parties during the hearing that since there is no

contractual relationship between the owner and the subtenants, the owner is not the landlord in the tenancy relationship between the landlord and the subtenants. Pursuant to section 64 of the *Act*, I amend the application for dispute resolution to state the original tenant as the landlord to the subtenants (the tenants in this application).

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56?

Background and Evidence

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

The landlord provided the following undisputed testimony. This tenancy began on April 25, 2020 and is currently ongoing. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that three days after the start of this tenancy agreement she started receiving complaints about the tenants. The landlord testified that in the late hours of April 27, 2020 continuing on into the early hours of April 28, 2020, loud screaming, yelling and banging could be heard, and the police were called. The landlord entered into evidence a witness statement from a neighbour which confirms the above.

The landlord testified that she has continued to receive complaints about the loud noises emanating from the subject rental property. The landlord entered into evidence a statement from a different neighbour which sets out the noise issues heard by that tenant on May 4, 7, 18, 19, 28, 30, 2020. The statement states that the tenants are constantly fighting with each other and slamming doors. The statement also states that "sketchy looking men" are frequently walking past her suite to retrieve items from under the deck of the subject rental property. The neighbour states: "I feel very uncomfortable

having them as neighbours to the point where I don't want to sit out on my deck or go downstairs alone to get my mail when my partner is not home."

The landlord entered into evidence a witness statement from a neighbour which states in part that on May 6, 2020:

On this day, the female could be heard on her deck physically throwing her flowerpots at someone and screaming at them using profanity. This occurrence was recorded on our cellphone, along with many others.... We called the RCMP who responded quickly.... Later the RCMP told us that they had separated the couple and told the male not to come back. Over the next couple of days, the male had come back, and the screaming and slamming doors persisted.

The landlord entered into evidence an audio recording in which a female can be heard screaming, swearing and slamming a door. The landlord testified that the female in the audio recording is tenant T.E. The landlord entered into evidence a video recording in which a female can be heard screaming and swearing. The landlord testified that the female in the video recording is tenant T.E.

The owner testified that she is concerned about damage done to the subject rental property because of the sound of slamming doors and thrown objects reported by the tenants' neighbours.

The landlord submitted that it is not fair to the other occupants of the subject rental building to have to continue to live with the disruptions caused by the tenants.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that 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 interests 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;*
- *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;*
- *engaged in illegal activity that 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, the tenant 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

Based on the witness statement entered into evidence, I find that tenant T.E. threw plant pots from her second-floor apartment on May 6, 2020 at a person. I find that throwing items such as plant pots from the second floor could cause severe injury to a person on the ground. I find that tenant T.E. seriously jeopardized the health and safety of another occupant and jeopardized the health and safety of the other occupants of the subject rental building who could have been walking below.

Based on the landlord's testimony and documentary evidence, I find that the tenants fight and argue frequently and that, on a balance of probabilities, the May 6, 2020 incident has a reasonable probability of re-occurring. Given the danger to people on the ground from Tenant T.E. throwing items from the second floor, I find that it would be unreasonable and unfair to the other occupants of the residential property to wait for One Month's Notice to take effect under section 47 of the *Act*. Therefore, pursuant to section 56 of the *Act*, I award the landlord and Order of Possession, effective two days from service on the tenants.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 30, 2020

Residential Tenancy Branch