



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act [landlord's notice for cause]; and
- recovery of the filing fee.

The landlord's agents (landlords) and tenant AT attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their affirmed testimony and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The evidence was discussed; the landlord, NL, said that he did not serve his evidence to the tenants, as he believed the tenants would have access to it through the Residential Tenancy Branch (RTB) dispute file for this application. The tenant confirmed she had not received any evidence from the landlords.

As it was undisputed that the landlords failed to serve the tenants with their evidence with their application for dispute resolution, as required by Rule 10.2, the section dealing with expedited hearings, I therefore excluded the landlords' digital evidence from consideration. The hearing proceeded on affirmed testimony.

Additionally, as another preliminary matter, the landlord submitted that their application package, containing the notice of hearing was attached to the tenants' door. AT confirmed she received the landlord's application for dispute resolution and notice of hearing and that she had shown the documents to the other tenant, BD.

As such, I find that both tenants were sufficiently served the landlords' application for dispute resolution and notice of hearing.

Issue(s) to be Decided

1. Have the landlords submitted sufficient evidence that this tenancy should end early and an Order of Possession be granted to the landlords?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing this tenancy began on May 15, 2019, and monthly rent is \$1,350.

The landlord explained that the rental unit was one of two rental suites in the basement level of a home owned by the landlord listed on the written tenancy agreement.

The landlords here explained that they have a power of attorney to act on behalf of the owner.

The landlord explained that the rental unit of the tenants was in the middle of the basement level, between the garage and the other rental unit. The landlord explained that the upper suite is occupied by the owner, when he comes into town.

The landlord said that the police were called and that the tenant was charged with breaking and entering the upstairs. The landlord submitted that the garage door was broken, there were broken locks, the upstairs glass door was shattered, and the upstairs suite was filled with personal belongings, including a knife and a bullet shell.

The landlord also said there was a big hole in the lower rental unit's wall.

Tenant's response –

Tenant AT explained that tenant BD was her son. The tenant also said that BD was no longer living in the rental unit.

The tenant submitted she was unaware of any damage caused by the other tenant and denied that they punched the hole in the wall. She said it was like that when they moved in.

The tenant said that BD had not been convicted of breaking and entering, as his court date is not until August 2020.

The tenant said that BD had called her since he left and asked her if she could retrieve his and his friend's personal property, including the friend's Xbox from the upper suite.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 56 of the Act is an extraordinary remedy which grants the Director authority to end a tenancy without a notice to end the tenancy if sufficient cause is established.

Section 56 (2) of the Act indicates that:

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.

The landlords have the burden of proof, on a balance of probabilities, to prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

As I have noted, I excluded the landlords' digital and written evidence, as he failed to serve that evidence on the tenant, as required. Therefore, the evidence in this matter was affirmed oral evidence.

After reviewing the oral evidence, in this case, I find the landlords submitted sufficient evidence to support their application.

The tenant confirmed that BD's personal property, along with that of his friend, was in the upper suite, which belonged to the owner of the residential property. I find it reasonable to conclude that the only way that would happen is that the tenant and his friend entered the upper suite illegally. The tenant also confirmed that the other tenant, BD, was arrested and had a court date.

I therefore find on a balance of probabilities that one of the tenants, BD, has significantly breached the tenancy agreement and the Act. I find that the tenant engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of the landlord, resulting in police attendance on the home.

Based on these conclusions, I find that the landlords have established sufficient cause to end this tenancy.

I am also satisfied that it would be unreasonable and unfair to the landlords to wait for the One Month Notice to End Tenancy to take effect, as I find without it, they are less likely to be able to preserve the property.

I therefore grant the landlords' application to end this tenancy early.

Conclusion

The landlords' application is successful. The tenancy ended this date, June 15, 2020.

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order of possession granted pursuant to section 56 of the Act can be enforced under *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020.

I additionally find the landlords are entitled to recovery of their filing fee of \$100 paid for their application pursuant to section 72(1) of the Act, due to their application being granted.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$100.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

Alternatively, if the landlords so choose, they may deduct \$100 from any security deposit held in satisfaction of their monetary award, and the monetary order granted would be of no force or effect.

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 15, 2020

Residential Tenancy Branch