



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened in response to an application by the Landlord for an order ending the tenancy early and an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”).

The Tenants did not attend the hearing. I accept the Landlord’s evidence that the Tenants were served with the application for dispute resolution, notice of hearing and all evidence (the “Materials”) by posting the Materials on the Tenants’ door on June 5, 2020 in accordance with Section 89 of the Act. Postal evidence indicates that the Tenants refused the mail. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by posting, on the 3rd day after it is mailed. Given the evidence of posting of the Materials I find that the Tenants are deemed to have received the Materials on June 8, 2020. The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy of a coach house attached to the Landlord's residence started under written agreement on December 8, 2019. Rent of \$1,100.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit.

The Landlord states the following:

The Tenants are both trafficking an illegal substance from the unit and are smoking an illegal substance in the unit. The Landlord has experience working in addictions and recognizes the smell of the substance being smoked. The smell of the substance has entered the Landlord's unit and has been smelled by the Landlord from both inside and outside the unit. On May 7, 2020 the Landlord both smelled and saw smoke coming from the unit while the Tenants were not in the unit. The Landlord was concerned about fire and entered the unit to find a 1 to 2 foot burned area on a carpet. The Landlord states that it did not say anything to the Tenants at the time as the Landlord is terrified of the Tenants due to a previous incident in late February 2020. On this occasion the Landlord woke to the Tenants yelling and screaming at the neighbour. The Landlord witnessed the commotion and the Tenants returning to their unit. The neighbour told the Landlord that the Tenants had pulled a gun on the neighbour. The Landlord spoke to the Tenants and told them that if they did not calm down the police would be called. The Landlord did not call the police at the time as both the Tenants and neighbour were inebriated, and the Landlord was not sure of the neighbour's veracity in the circumstances. The Landlord spoke to the neighbour the next day and the neighbour confirmed the gun, so the Landlord reported the matter to the police.

On April 2, 2020 the Landlord went to the unit to serve an order of possession on the Tenants when one Tenant came to the door, called the Landlord names, screamed profanities and became aggressive. Another neighbour of the Landlord heard the

commotion and believed this Tenant needed mental health assistance due to this Tenant's behavior and because the Tenant expressed suicide. The police were called, and the police later informed the Tenant that the Tenant refused assistance and denied needing help. The police informed the Landlord that they believed the Tenant was under the influence of substance abuse. The Landlord confirms that the order of possession was granted for unpaid rent in a Decision dated March 31, 2020. The Landlord cannot seek a writ of possession given the state of emergency and the Ministerial Order restricting the enforcement of the order of possession.

On or about May 21, 2020 one Tenant was seen to remove a package from the wheel well of a car parked on the property and belonging to the Landlord's boyfriend. After returning to the unit the boyfriend heard the Tenant's air conditioner being turned on despite rain and cold a temperature of 8 degrees Celsius. The Tenants have repeatedly turned the air conditioner on in the unit even in cold weather and given this and the known smell of an illegal substance emanating from the unit the Landlord believes that the Tenants are smoking the illegal substance in the unit. The Landlord states that upon knocking on the Tenants' door one of the Tenants looked out the window with a pen pipe in its mouth. The Landlord recognizes this as paraphernalia used to smoke the illegal substance. The Tenant refused the Landlord entry until the Landlord informed the Tenant that both the police and fire department would be called. The Landlord states that at the time the Landlord forgot its fear due to its fury with the Tenants' behavior but as the Tenant came down and started to yell at the Landlord the Landlord stepped back. The Landlord was given entry to the unit and confirmed the smell of the substance being in the unit. The Tenants and another person present all started to yell profanities at the Landlord again. As the Landlord was leaving the unit one Tenant lunged at the Landlord calling the Landlord names and yelling profanities. The Landlord then called the police who advised the Landlord to seek an immediate and urgent end of the tenancy.

Since the Landlord served the Tenants with this application the Tenants have become very angry and when the Landlord subsequently was seen outside by the Tenants on one occasion, they called the Landlord profane names. The Tenants have also had multiple visitors coming and going from the unit. On June 10, 2020 the Landlord witnessed two persons coming and going from the unit repeatedly over an hour then finally leaving the unit with a parcel. At the same time the neighbour also saw a cash exchange for the parcel. Both the Landlord and the neighbour called the police. Since that date the police have been seen repeatedly circling the neighbourhood and parked at the end of the Landlord's lane. The Landlord is terrified and for these reasons the tenancy must end on an emergency basis. The Landlord provides witness letters.

Analysis

Section 56(2) of the Act provides 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, 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.

It is undisputed that the Tenants are smoking a substance in the unit. Given the undisputed evidence of the Landlord's olfactory recognition of the substance being illegal, the evidence of persons coming and going from the unit, the evidence of the Tenant retrieving a package from a visitor's car parked at the property, and the evidence of the neighbour witnessing a money transaction for a package at the unit I find on a balance of probabilities that the Landlord has substantiated that the Tenants are engaged in an illegal activity.

Given the Landlord's undisputed evidence that the Landlord entered the unit after smelling smoke from the unit and the Landlord's undisputed evidence that upon entry the Landlord smelled the illegal substance and found a large burn on a carpet I find on a balance of probabilities that the Landlord has substantiated that the illegal activity has caused or is likely to cause damage to the Landlord's property.

Given the undisputed evidence of the presence of a gun along with the Landlord's undisputed evidence of the Tenants' aggression towards the Landlord I accept that the Tenants have caused the Landlord to be terrified. I find on a balance of probabilities that the Landlord has substantiated that it would be unreasonable for the Landlord to wait to serve a one month notice to end tenancy. The Landlord is entitled to an order of possession effective two days after its service on the Tenants.

As the Landlord's application has been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee and the Landlord may deduct this amount from the security deposit plus zero interest of \$550.00 in full satisfaction of this claim.

Conclusion

I grant an Order of Possession to the Landlord. The Tenants must be served with this **Order of Possession**. Should the Tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain \$100.00 from the security **deposit** and interest of \$550.00 in full satisfaction of the claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 17, 2020

Residential Tenancy Branch