



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MCLAREN HOUSING SOCIETY OF
BC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

On June 19, 2020, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “Act”).

M.P. and K.S. attended the hearing as agents for the Landlord. The Tenant attended the hearing as well, with R.Q. attending as a support for the Tenant. However, she did not provide any testimony. All in attendance provided a solemn affirmation.

M.P. advised that they served the Tenant a Notice of Hearing and evidence package by hand on June 22, 2020, and the Tenant confirmed receiving this package. Furthermore, he did not make any submissions or have any opposition to when or how it was served to him. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and evidence package.

There was no evidence submitted by the Tenant for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee for this Application from the Tenant?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2017, that the subsidized rent was currently established at \$320.00 per month, and that it was due on the first of each month. A security deposit of \$490.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

M.P. advised that there has been a history of behavioural issues and actions in the past that have contributed to the reason for this Application; however, she noted that the crux of this Application revolves around the manner with which the Tenant is living in the rental unit that has rendered it uninhabitable. She advised that the Tenant was hospitalized on June 17, 2020 and an inspection was done on the rental unit. There were holes in the walls, and it appeared as if the electrical system had been tampered with that could result in a short circuit. She referenced a picture, that was submitted as documentary evidence, of this damage and noted that the handyman recommended turning the electricity to the rental unit off in order to prevent a potential fire hazard.

She stated that the appliances in the rental unit are completely unusable due to the manner with which the Tenant cared for them, that there is broken glass all over the floor, and that the Tenant had been burning things in the hall. She cited pictures demonstrating that excrement was smeared on the walls, depicting the amount of filth and garbage strewn around the kitchen preventing the ability to use it or access appliances such as the fridge, and illustrating that the sink is unusable because of the debris.

She stated that there is black mould in fridge, and she referenced a picture of this damage. She also noted that the fire alarm, smoke detector, and sprinklers have either been removed or covered, and that the bathroom fan had been removed entirely. Finally, she stated that the bathroom mirror had been broken, that there were multiple holes in the walls, and that there was a hammer hanging from one of the holes. Pictures were submitted to support all of this damage.

K.S. advised that she went into the rental unit and was overwhelmed by the odour of urine. She also confirmed that there was feces on the walls. She noted that there was an abundance of fruit flies that would escape into the hall once the door to the rental unit was opened. She stated that it is not possible to walk around the rental unit without stepping on garbage, debris, or the Tenant's property. She also confirmed that the Tenant interfered with the fire system by removing the smoke alarms. She advised that the condition of the rental unit is the worst she has seen in 25 years, and due to the manner with which the Tenant was living in the rental unit, it is not safe for habitation.

The Tenant advised that the allegations of damage are untrue and that he simply left his clothes on the floor, that there were some cans strewn about, and that there was no garbage. He stated that the rental unit simply needed some cleaning. He noted that there were some dents in the wall but then he stated that he made some holes in the wall when he "got upset" and "punched one." With respect to the Landlord's allegation of him tampering with the electrical system and the picture of an exposed wire hanging from a hole in the wall, he advised that this was not a wire but a key chain.

He advised that since being released from the hospital, he has been denied access to his rental unit. M.P. confirmed that his access to the building has been decommissioned. K.S. advised that due to the smoke alarms being removed and the tampered electrical, he was prohibited from returning to the rental unit out of potential safety concerns for the other tenants. She stated that the rental unit was a biohazard, that the kitchen is filled with mould, that the rental unit is uninhabitable, and it will require being completely gutted and renovated.

M.P. and K.S. were cautioned that they are not arbitrarily allowed to deny the Tenant access to the rental unit.

The Tenant then continued his testimony and advised that he was going through hard times prior to being hospitalized. He acknowledged that the pictures submitted are an accurate depiction of the current state of the rental unit and he apologized for this. He confirmed that the mirror was not broken due to an accident but because he punched it;

however, he then stated that he cannot “remember what happened.” With respect to the hole in the wall near the broken mirror, he stated that he was not sure who put the hole in the wall, but he put his hammer in the hole as a convenient place to hang or store it. Finally, he refuted that there was a urine odour or that there was excrement on the walls.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. 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.

While the Tenant refuted many of the Landlord’s allegations, I find it important to note that he confirmed that the pictures of the condition of the rental unit were an accurate reflection of the state. In reviewing this evidence, I am satisfied that the amount of

garbage and debris is excessive and likely a hazard. As well, the condition of the fridge and sink are unreasonable, and I am satisfied that there is substantial damage depicted. Furthermore, there are many holes in the walls, of which there is consistent testimony from the Tenant that confirms he was responsible for them. While he claims that he did not make the hole in the bathroom wall, in my view, it is not consistent with common sense or ordinary human experience that he would hang a hammer in a random hole in the wall. As this hole in the wall is the exact same size as the hammer, I can reasonably infer that the Tenant more likely than not caused this damage with the hammer. Therefore, based on a balance of probabilities, I am satisfied that the Tenant was, more likely than not, responsible for all the holes in the walls.

The Tenant also confirmed that he was negligent for breaking the mirror and he made no submissions with respect to the removal of the smoke alarms and fire system. When reviewing the pictures submitted as documentary evidence, clearly these fire detection devices were removed, and it appears as if paper has been stuffed in its place.

When reviewing the totality of the evidence before me, I find that the Tenant's testimony is conflicting and that it does not make sense. This causes me to be doubtful of the credibility of his testimony. As a result, I find it more likely than not that the Landlord's evidence is more compelling and persuasive on the whole. As such, I prefer the Landlord's evidence.

Ultimately, I am satisfied that the Tenant's behaviours were likely intentional, malicious, and that they pose a danger that would fall into the categories of: seriously jeopardizing the health or safety or a lawful right or interest of the Landlord, putting the Landlord's property at significant risk, and causing extraordinary damage to the residential property.

The Landlord must also demonstrate that "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 for cause" to take effect. Based on the consistent evidence and testimony of the Tenant's troublesome past and current behavior, I accept that the Tenant has substantially damaged the rental unit and there is likely a genuine concern for the ongoing safety of the other residents of the property.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlord has provided sufficient evidence to warrant

ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant 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: July 14, 2020

Residential Tenancy Branch