



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Evergreen Place APTS., LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:44 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords' agents ("landlords") attended the hearing and were given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that the tenant was served with the landlord's application for dispute resolution package and evidence on July 13, 2020, by way of posting the documents on the tenant's door. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with the landlords' application package on July 16, 2020, 3 days after posting. The tenant did not submit any written evidence for this hearing.

At the beginning of the hearing, the landlords confirmed that the tenant's name was duplicated on the application. As the applicants were not opposed, the duplicated entry was removed from the application.

Issues(s) to be Decided

Is the landlord entitled to an early end of 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 all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

The landlords provided the following submissions. This month-to-month tenancy began on September 1, 2019, with monthly rent currently set at \$850.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$425.00, which the landlord still holds.

The landlords filed an application for an early end of this tenancy on an expedited basis due to the serious and threatening nature of the incidents that have taken place during this tenancy. The landlords testified that at least 26 complaints have been filed regarding the tenant since the tenant moved in on September 1, 2019. The landlord testified that the incidents have escalated to the extent that the landlords are fearful for their safety.

The landlords testified that the incidents include extensive damage to the tenant's suite, including damage to the shower head, and flooding of the tenant's unit and unit below, paint on the tenant's walls, and other undetermined damage to the tenant's rental unit. The landlords testified that the tenant has acted out in an effort to intimidate and harass the tenant below for smoking on her balcony, and against the landlords for attempting to address the ongoing issues with the tenant.

The landlords testified that the RCMP have attended, and the tenant had been previously arrested for assaulting a 74 year old man. The landlords are fearful that the continuance of this tenancy would result in ongoing threats and violence against them, other tenants, and damage to the tenant's unit, and adjacent units.

TG testified that when she would attempt to address issues with the tenant, the tenant would respond in a very aggressive and threatening manner, to the extent that she is too fearful to address the tenant and his ongoing actions.

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 a 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.

Based on the evidence and sworn testimony before me, I find that sufficient evidence has been provided to warrant an end to this tenancy for several of the reasons outlined in section 56, as outlined above. I find that the tenant has seriously jeopardized the health or safety or a lawful right or interests of the landlord and their agents, and other residents in the building. The landlord is seeking an Order of Possession as the landlords are concerned that the tenant's behavior is threatening and violent in nature, and has escalated to the extent that they are extremely fearful of the tenant.

The second test to be met in order for a landlord to obtain an early end to tenancy pursuant to section 56 of the *Act* requires that a landlord 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. On this point, I find that the reasons cited by the landlord for circumventing the standard process for ending a tenancy for cause meet the test required to end this tenancy early as this matter pertains the immediate safety of the landlord, other tenants, and their property.

The deliberate damage caused by the tenant in such a short period of time during this tenancy, combined with the tenant's aggressive response to the landlord and their agents are quite worrisome. Although it would have been preferable to have some of the witnesses in attendance at the hearing to provide direct, sworn testimony, I also note that the tenant has chosen to not appear at this hearing, nor has he provided any contrasting accounts by way of written evidence.

The main reason for the urgent nature of this application is the immediate risk to the safety of the landlord and other occupants, and I find that the landlord has provided sufficient evidence to support this. Of particular concern are the ongoing aggression towards the landlords, other tenants, along with the damage to their property, which highlights the potential volatility that the landlord, landlord's agents, and other residents may face if this tenancy continues, and the potential for further violence and damage to the property.

Under these circumstances, I find that it would be unreasonable and unfair to the landlord and his wife to wait for a 1 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. I issue a two day Order of Possession to the landlord.

I allow the landlord's application to recover the \$100.00 filing fee from the tenant. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the security deposit in satisfaction of this monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the \$100.00 filing fee by allowing the landlord to retain \$100.00 from the security deposit for this tenancy.

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 23, 2020

Residential Tenancy Branch