



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to 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 two landlords, male landlord ("landlord") and "female landlord," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 76 minutes.

"Witness BS" provided affirmed testimony on behalf of the landlord at this hearing. Both parties had equal opportunities to question the witness.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlords confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application and both landlords were duly served with the tenant's evidence.

Issues to be Decided

Are the landlords entitled to an early end to tenancy and an Order of Possession?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness BS, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 13, 2020. Monthly rent in the amount of \$775.00 is payable on the first day of each month. A security deposit of \$387.50 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The tenant occupies a room in a shared basement with other occupants, while the landlords live on the upper floor of the same rental property.

The landlord testified regarding the following facts. The landlord feels unsafe, in fear, and threatened by the tenant living at the rental unit. The tenant has made racist, profane and threatening comments towards the landlord. The tenant disturbs the other occupants living in the communal basement suite at the rental property. The landlord saw a car in front of the rental property, that delivered a package of drugs to the tenant. The landlord called the police twice regarding the tenant, two case file numbers were made, but the police were unable to enter the tenant's room because the tenant left the rental property, and the police did not have an order to enter his room. There is a smell of burning rubber coming from the tenant's room, which is directly below the landlord's kitchen upstairs. The tenant has tried to burn the landlord's house down, he leaves the oven on at 400 to 500 degrees, and the landlord has had to turn the oven off himself.

The landlord stated the following facts. The tenant leaves the washer and dryer on all night. The tenant screamed, yelled and pushed the landlord on the first day that he moved into the rental unit, when the landlord told him not to move in early. The landlord gave the tenant a notice to end tenancy and the tenant threw it back at the landlord. The tenant has been causing problems since the day he moved into the rental unit. The landlord tried to settle with the tenant, prior to this hearing, as per information given by the Residential Tenancy Branch ("RTB"). The landlord served a 1 Month Notice to End Tenancy for Cause, dated July 17, 2020 ("1 Month Notice") with an effective move out date of August 15, 2020, to the tenant and provided a copy for this hearing.

The tenant testified regarding the following facts. On June 15, 2020, the landlord became upset with the tenant and called him names. The landlord initially gave the wrong notice to end tenancy to the tenant, as it was not on an RTB form. Witness BS has left threatening notes under the tenant's door and harasses the tenant. The tenant has called the police and is not causing any problems at the rental property. The landlords' daughter has shouted insults at the tenant and accused him of making methamphetamine. The tenant has not left the oven and washing machines on, he was stressed out and not taking care of himself over the last couple of weeks and has not even been using the washing machines. The tenant uses the washing machines between 9:00 a.m. and 9:00 p.m.

The tenant stated the following facts. The tenant does not know why the landlord feels unsafe because the tenant is not a threat, the tenant has been accused of being a criminal, and the tenant just sits in his room and plays video games. The tenant referenced two videos he submitted which he said shows harassment by the landlords' daughter and the landlord following him off the property which shows the landlord is not afraid of him. The landlord has not submitted any evidence of manufacturing drugs and the tenant does not manufacture methamphetamine. The tenant uses a draft protector seal under his bedroom door. The problems with the landlord have occurred over the last two weeks.

Witness BS testified regarding the following facts. He is 56 years old. He shares the basement with the tenant and rents his own separate room there. The tenant moved in between June 13 and 15, 2020. Witness BS came through the back door at the beginning of the tenant's tenancy at 9:00 a.m. and heard the tenant use profane language against the landlord and the landlord offered to give the tenant his money back so he could leave but the tenant told the landlord he had a fixed term lease. Witness BS went into the kitchen around 2:00 a.m. one day and the tenant had left the kitchen oven on at 450 degrees and left the hot toaster on and went to sleep. He has noticed the oven left on by the tenant as recently as one week ago. The tenant defecates in the toilet and does not flush it.

Witness BS stated the following facts. On July 21, 2020, the tenant had a "fit" and turned the washer and dryer on full and left the oven on at 450 degrees. The tenant uses vulgar language and is suing the landlord for copyright theft. Witness BS cannot handle living at the rental property and wants to get a hotel for one week to get away from the tenant. Witness BS' former roommates were good for two weeks until they moved out and the tenant moved in. At 4:00 a.m. on July 18, 2020, witness BS noticed a strong, pungent smell in the tenant's room, the stove and bathroom fans were on, and

he recognized the smell as heroine because one of his old friends died of a heroine overdose in the past. The landlord disabled the fans in the basement because the tenant keeps them on all the time. Witness BS is not talking to the tenant right now. He works in the landlords' garden but is not paid by the landlords.

Analysis

Credibility

Overall, I found the landlord to be a more credible witness than the tenant. I found him to be honest and forthright in his testimony, providing it in a candid manner. I found that the landlord agreed even if facts were not favourable to his version of events. The landlord was respectful of the tenant throughout the hearing. He did not interrupt the tenant or witness BS when they were speaking, and he did not fight or argue with them when they provided testimony.

Conversely, the tenant provided his testimony in an upset and agitated manner. The tenant yelled at witness BS and argued with him when he did not like the responses given. I warned the tenant three times about his behaviour with witness BS, but the tenant continued, despite my warnings. The tenant interrupted the landlord throughout the hearing, arguing with his version of events, despite my numerous warnings to the tenant.

Legislation and 1 Month Notice

Section 56 of the *Act* requires the landlords to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlords or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlords must show, on a balance of probabilities, that:

- (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 landlord indicated the following reasons in the 1 Month Notice issued to the tenant:

- *the tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord...*

Findings

On a balance of probabilities and for the reasons stated below, I find that the tenant significantly interfered with and unreasonably disturbed the landlord and witness BS, an occupant, at the residential property.

I also find that the landlords' application meets the second part of the test under section 56(2)(b) of the Act. I find that the landlords provided sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to take effect. The landlord issued a 1 Month Notice to the tenant by posting it on his door on July 17, 2020, with an effective date of August 15, 2020. The effective date automatically corrects to August 31, 2020, as per section 53 of the Act. I find that it would be unreasonable and unfair for the landlord to wait until August 31, 2020, for the 1 Month Notice to take effect.

I find that the tenant caused a number of incidents resulting in significant interference and unreasonable disturbance to the landlords and witness BS at the rental property. I accept the landlords' documentary and testimonial evidence. The landlord and witness BS who both reside at the residential property provided affirmed testimony, that the tenant engaged in disturbing behavior, causing fear, intimidation, and unsafe health and safety risks to them. The police attended at the residential property twice, as a result of calls from the landlord regarding the tenant. Both the landlord and witness BS testified that the tenant left the oven on high at 450 degrees and went to sleep, which both the landlord and witness BS witnessed multiple times and had to turn off. This is a safety fire hazard to the landlords' property, and a health and safety hazard to the landlords and witness BS who all reside at the rental property.

Witness BS has seen the tenant use profane language against the landlord. The landlord has personally experienced profane, racist language and threats from the tenant, and was pushed by the tenant when he first moved in. Both witness BS and the landlord have smelled a burning rubber smell coming from the tenant's room, which was reported to the police. The landlord witnessed the tenant's door seal, which the tenant agreed was sealed by him. Witness BS wants to leave the rental unit to be away from the tenant.

I find that the landlords provided sufficient evidence regarding the urgency and seriousness of this situation. I accept the evidence of the landlord and witness BS, who say that this behaviour began when the tenant moved in on June 13, 2020. I find that the tenant's behaviour is causing the landlord to be fearful and unsafe in his own home and that there is a serious fire hazard risk to the rental property.

Accordingly, the landlords' application for an early end to tenancy is allowed. The landlords are granted an order of possession effective two (2) days after service on the tenant.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenant. I order the landlords to deduct \$100.00 from the tenant's security deposit of \$387.50. The remainder of the tenant's security deposit of \$287.50 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

Conclusion

The landlords' application is allowed. I grant an Order of Possession to the landlords effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to deduct \$100.00 from the tenant's security deposit of \$387.50 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of \$287.50 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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 31, 2020

Residential Tenancy Branch