



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's 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 tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord's agent JS ("landlord") and "landlord TB" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he was the manager of tenant relations for the landlord company named in this application and that he had permission to speak on its behalf. Landlord TB did not testify at this hearing.

The landlord stated that the tenant was served with the landlord's application for dispute resolution hearing package on July 24, 2020, by way of posting to the tenant's rental unit door. The landlord provided a signed, witnessed proof of service with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 27, 2020, three days after its posting.

Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

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

The landlord testified regarding the following facts. This month-to-month tenancy began on July 1, 2017. Monthly rent in the subsidized amount of \$461.00 is payable on the first day of each month. A security deposit of \$304.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord testified regarding the following facts. The landlord received a complaint on July 21, 2020, from another occupant in the rental building that the tenant was subletting the rental unit to another person who was dealing drugs. There have also been other reports to the landlord, from other occupants at the rental property, regarding this rental unit. There was a report of a gun at the rental property. This is family housing. A One Month Notice to End Tenancy for Cause ("1 Month Notice") was issued to the tenant on July 22, 2020, and it is effective on August 31, 2020. A copy of the notice was not provided for this hearing. The landlord cannot wait for the notice to take effect because the tenant has not responded to it and it is unlikely that he will move out. The landlord needs a resolution to this matter as soon as possible.

The landlord stated the following facts. There are "unbiased" reports from other occupants at the rental property that there are people coming and going from the tenant's rental unit, that are not the tenant. There were photographs and reports submitted by these occupants for this hearing. There are reports of a noisy motorcycle being driven on the grass, drug use and dealing of drugs, and significant traffic of people going in and out of the tenant's rental unit. One of the occupants provided a public criminal history record to the landlord in mid-August 2020, but it was not provided for this hearing because the landlord did not have time to serve it to the tenant. The landlord requested information from the police but was unable to get information because they are not a party to the matter. The tenant has not responded to the landlord's letters and has moved to a different unit with another roommate.

Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”), due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlord 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 landlord 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;*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be “unreasonable” or “unfair” to wait for a 1 Month Notice to be determined.

The landlord did not testify about which one of the above parts of section 56(a) of the *Act*, he was applying under.

The landlord failed to show the urgency of this situation to demonstrate that it would be “unreasonable” or “unfair” to wait for a 1 Month Notice to be determined. The landlord's 1 Month Notice takes effect on August 31, 2020, six days after this hearing on August 25, 2020. I find that the landlord can wait for this notice to take effect.

The landlord suspects that the tenant is engaging in illegal activity, including drug use and trafficking, as well as a gun at the rental property. However, the landlord did not provide proof of any criminal charges or convictions. The landlord did not produce any police reports or police officers to testify at this hearing. The landlord provided a police file number with no further information. The landlord believes that the tenant is living in another rental unit and has sublet his unit to other people but has not provided sufficient evidence of same.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

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: August 25, 2020

Residential Tenancy Branch