



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

In this dispute, the landlord seeks an order pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the filing fee under section 72.

The landlord filed an application for dispute resolution on July 10, 2020 and a dispute resolution hearing was held, by teleconference, on August 17, 2020. The landlord’s two agents (the “landlord”) and a witness for the landlord attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. The tenant did not attend.

The landlord testified that they served the Notice of Expedited Hearing (“NEH”) on the tenant by way of Canada Post registered mail. A copy of the receipt and tracking number were submitted into evidence and the online registered mail tracking website for Canada Post indicated that the NEH was mailed on July 11 and delivered to the tenant on July 13, 2020. Based on this undisputed evidence I find that the landlord served the tenant with the NEH in full compliance with both the Act and the *Rules of Procedure*.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to an order under section 56 of the Act?
2. Is the landlord entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

This tenancy started on October 1, 2019. Monthly rent is \$2,500, and the tenant paid a security deposit of \$1,250 and a pet damage deposit of \$1,250. A copy of the written tenancy agreement was submitted into evidence.

The issues that gave rise to the landlord making this application involve the tenant's ongoing disturbing behavior, which includes but is not limited to causing disturbances to the downstairs' tenant (the "neighbour") at all hours of the night. This behavior, including screaming, yelling, and throwing of objects, has persisted since January 2020, but has recently escalated. The neighbour testified, during the hearing, and explained that approximately three weeks ago the tenant "tried breaking into my bathroom window", all the while screaming at the neighbour to open the garage. This occurred at 12:30 AM.

In addition, the landlord submitted the following written description of the other issues with this tenant, and which they affirmed is an accurate rendering of the matter:

Agents and landlord have received multiple complaints about the problem of tenant [redacted] behaviour. RCMP arrived and arrested many times. There is a school only one block from this property. Many residential families close by and a tenant lives at a lower level of this building. [Tenant] is creating a nuisance or interfering with other residents' rights, comfort and quiet enjoyment. In addition to the above, generally and specifically during the COVID-19 pandemic, the government set a "state of emergency" asking everyone to stay home and be safe. The tenant [redacted] brought the strong odour of drugs from the property is raising health concerns amongst other residents, fighting shouting, arguing and slamming doors throwing things is not bringing the safe environment. One month notice to end the tenancy sent out in April. Neighbours repeatedly called RCMP, this is No ending. This situation needs to stop immediately.

It should be noted that the landlord cautioned the tenant about her behavior in a warning letter sent January 2020, but this had zero effect on the tenant's behavior. The landlord served a One Month Notice to End Tenancy for Cause on April 24, 2020; unfortunately, the government's moratorium on such notices during the pandemic rendered this notice moot and of no force or effect.

The tenant's behavior got so out of control that the police arrested the tenant for a domestic fight on June 13, 2020. A police file number was referenced in the landlord's evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 56 (1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied 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, 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.

In this case, I find that the tenant's behavior has, over the past several months, significantly interfered with and unreasonably disturbed another occupant. I further find that the tenant's attempt to break into the neighbour's rental unit to be an illegal activity

that has clearly affected and adversely the affected the quiet enjoyment, security, safety, and physical well-being of another occupant of the residential property.

Finally, given that the landlord was unable to grant a notice to end tenancy under section 47 of the Act for the majority of the time in which the tenant has caused these issues, I find that it would be both unreasonable and unfair to both the landlord, and especially to the other occupant, of the residential property to have to wait for a notice to end the tenancy under section 47 of the Act.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order under section 56 of the Act. I order that the tenancy ended, effective today, and that an order of possession shall be granted to the landlord.

As the landlord was successful in their application, I grant them the filing fee under section 72 of the Act. As the tenancy has ended, I authorize the landlord to retain \$100.00 of the tenant's security deposit, to pay for the application filing fee, under section 38(6) of the Act.

Conclusion

I order that the tenancy is ended effective immediately.

I grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 17, 2020

Residential Tenancy Branch