



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dolly's Fish Market
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* (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 from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant's spouse was initially the only person identifying themselves as present at the hearing to represent the tenant's interests. When it became apparent that the tenant's spouse was not a named tenant on the Residential Tenancy Agreement (the Agreement) and might in actuality be an occupant, who had provided no written authorization to represent the tenant as the tenant's agent in this dispute, the tenant's spouse maintained that the tenant had just entered the rental unit. They said that the tenant knew nothing about this hearing or the landlord's application to end this tenancy early.

The tenant's spouse confirmed that the landlord handed them a copy of the landlord's dispute resolution hearing package and written evidence on August 22, 2020, I find that the tenant was duly served with this material in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant and the landlord signed a one-year fixed term Residential Tenancy Agreement on April 30, 2018, for a tenancy that was to run initially from May 1, 2018 until May 1, 2019. When the initial term ended, the tenancy continued as a month-to-month tenancy. The landlord gave undisputed sworn testimony that the tenant's spouse moved into the rental unit with the tenant a few months after the tenancy began, although they never signed a new Agreement with the landlord to have their name added to the Agreement. Monthly rent is set at \$800.00, payable on the first of the month. The landlord continues to hold the tenant's \$400.00 security deposit paid when this tenancy began. The landlord gave undisputed sworn testimony that there is rent owing for this tenancy, and that the tenant has not paid their September 2020 rent.

The parties agreed that the landlord handed the tenant's spouse a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on August 20, 2020, seeking an end to this tenancy by September 30, 2020, for the following reasons identified on that Notice:

Tenant or a person permitted on the property by the tenant has:

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

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;*

The tenant's spouse testified that neither they nor the tenant have applied to cancel the 1 Month Notice. They said that they thought that the notice provided to them on August 22, 2020 for the matter currently before me took the place of the 1 Month Notice. I advised that the 1 Month Notice was a separate matter and that they were incorrect in assuming that the landlord had somehow waived their right to pursue an end to this tenancy on the basis of the 1 Month Notice.

In the landlord's application, their written evidence and their sworn testimony, the landlord maintained that six police cars attended the rental unit shortly before they applied for an early end to this tenancy. With a warrant to conduct a search for illegal drugs, the police broke into the rental unit, seriously damaging the door of the rental unit. They provided photographic evidence to support their assertions in this regard.

The landlord maintained that the tenant and their brother was handcuffed and arrested by the police on the premises at that time.

The tenant and the tenant's spouse testified that the tenant was not on the premises when the police used their warrant to enter the premises. The tenant's spouse said that the tenant's brother was arrested, and that the tenant was never charged with anything related to this matter. The tenant also testified that he was not charged by the police with respect to the matter involving the search warrant. They did not dispute the landlord's assertion that they were taken into police custody following that incident. However, both the tenant and the tenant's spouse confirmed that the police have imposed a curfew on the tenant restricting his access from the rental unit. They maintained that this curfew is unrelated to the alleged drug incident in which the police were looking for the tenant's brother who lives elsewhere.

By contrast, the landlord testified that they had spoken with the local police chief who confirmed that the tenant had been taken into custody for drug related charges stemming from their use of the rental unit. They maintained that there was a police file report on this matter, although they do not have a copy of that actual report. The landlord also said that there have been frequent issues regarding this tenancy, as the traffic entering and exiting the rental unit, and the number of police monitoring the comings and goings of people, have caused disturbance for her restaurant business on the same property. They also provided undisputed photographic evidence of damage to the door caused when the police had to break the door to enter the rental unit and use their search warrant.

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 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.

There was considerable conflicting sworn testimony provided by the parties with respect to this application. In assessing the credibility of the parties, I should first note that the tenant's spouse initially said that the tenant was not available as they had a job interview that morning, after having been released from police custody. The landlord said that they had seen the tenant enter the rental unit earlier, and that police in their cars were monitoring the tenant's comings and goings that morning. Shortly after the tenant's spouse gave sworn testimony that they were alone in the rental unit, I overheard them speaking to someone in the background and asked with whom they were speaking. The tenant's spouse said that they were speaking with the tenant. When reminded that they had just testified a few minutes earlier that they were alone, they claimed that the tenant had just returned to the rental unit. This very clear example of untruthful testimony provided by the tenant's spouse reinforced my assessment that the sworn testimony provided by the landlord was much more credible than the testimony provided by the tenant's spouse and the tenant.

The landlord issued a 1 Month Notice a few days prior to applying for an early end to this tenancy, and the tenant or their spouse have not applied to cancel that Notice. Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I advised the tenant's spouse that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, September 30, 2020.

Based on a balance of probabilities, I find that the landlord has provided sufficient evidence to warrant an end to this tenancy for the reasons outlined in the first portion of section 56, as outlined above. The incident involving the police having to break into the rental unit to implement their warrant confirms that the landlord has every reason to believe that there is illegal activity, quite likely drug related, that has been occurring on the premises, and which has drawn the attention of the local police on an ongoing basis. Damage has occurred to the door of the rental unit that would not have occurred had the police not had to break down the door to enter the premises.

As was outlined above, 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.

Under these circumstances and based on a balance of probabilities, I find that the landlord has valid reason to be concerned about their safety and the safety of others who frequent their commercial establishment should this tenancy be allowed to continue. I find that it would be unreasonable and unfair to the landlord to wait for the undisputed 1 Month Notice to take effect on September 30, 2020. For these reasons, I find that the landlord has provided sufficient undisputed evidence to warrant ending this tenancy early, rather than waiting for the 1 Month Notice to take effect. I issue a two day Order of Possession to the landlord.

As the landlord has been successful in this application, I allow the landlord's application to recover the \$100.00 filing fee from the tenant.

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. The revised value of the security deposit currently retained by the landlord is reduced from \$400.00 to \$300.00.

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: September 03, 2020

Residential Tenancy Branch