



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 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 10:06 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and their advocate/agent (the agent) 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 from the teleconference system that the landlord, their agent and I were the only ones who had called into this teleconference.

The landlord and the agent testified that they both participated in posting a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenants' door on July 28, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 1 Month Notice on the third day after its posting, July 31, 2020. The landlord's agent testified that they posted the dispute resolution hearing package on the tenants' door on August 19, 2020. The landlord's agent said that the tenants were home when they posted the dispute resolution hearing package on the door and that they are certain that they received it because the tenants have referred to this hearing notice in the written evidence that the tenants submitted with respect to this matter. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application for an early end to this tenancy on the

fifth day after its posting, August 24, 2020. As applications for monetary awards cannot be served by posting on tenants; doors, I dismiss the landlord's application for the recovery of their filing fee as it was not served in accordance with section 89 of the *Act*.

The agent testified that they served their written evidence to the tenants by way of emails sent on August 14, 2020. Since service of written evidence by email is not an allowed method of service for written evidence, I advised the landlord and their agent that I could not consider their written evidence, although I was willing to consider their sworn testimony with respect to their reasons for seeking an early end to this tenancy.

At the hearing, the landlord and their agent said that they were uncertain as to whether the tenants have vacated the rental unit.

Issues(s) to be Decided

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

Background and Evidence

On June 27, 2020, the landlord and the tenants signed a one-year fixed term Residential Tenancy Agreement (the Agreement) that is scheduled to enable the tenants to reside in the rental unit from June 27, 2020 until April 30, 2021. Monthly rent is set at \$1,950.00, payable in advance on the first of each month, plus heat and hydro. The landlord continues to hold the tenants' \$975.00 security deposit, paid on June 26, 2020. The landlord and agent testified that the tenants have not paid rent for August or September 2020.

The landlord and their agent have served two Notices to End Tenancy to the tenants. The first of these, the 1 Month Notice, identified the following reasons for seeking an end to this tenancy for cause:

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;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Although they mistakenly identified July 28, 2020, the same date as the application was served, as the effective date for the tenants to end this tenancy, I advised the landlord and their agent that the corrected effective date for the 1 Month Notice was August 31, 2020. The landlord and their agent testified that as far as they were aware, the tenants have not applied to cancel the 1 Month Notice.

The second Notice to End Tenancy was issued on August 2, 2020, for \$1,950.00 in unpaid rent that became owing that day for the month of August. The tenants did apply to cancel that 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), as during the State of Emergency declared in response to the COVID-19 pandemic, Notices to End Tenancy of this type could not be issued for unpaid rent that became owing between mid-March 2020 and late August 2020. A hearing has been scheduled for September 18, 2020 to consider the tenants' application to cancel the 10 Day Notice (see reference above).

At the hearing, the landlord and their agent described behaviours exhibited by the tenants during this tenancy, which they considered threatening and violent. The agent said that other tenants in this multi-unit residential building were very worried about participating in the hearing or providing anything in writing for consideration at the hearing for fear of Tenant MT's reaction to such testimony or evidence. The agent and the landlord said that episodes of violence between the tenants heard by other tenants in the building raised concerns as to the safety of Tenant NC and others in the building if this tenancy were to continue until ended in accordance with the 1 Month Notice. They said that they had received text messages from Tenant NC that indicated that there was a real concern about physical harm being done by Tenant MT if this tenancy were to continue.

The agent also said that the police have become involved in the interaction between Tenant MT and the agent and/or landlord to the extent that the police have required Tenant MT to refrain from having further communications with the agent. The agent said that they felt threatened by Tenant MT and his frequent communications with the agent.

At one point, the tenants had asked the landlord and/or their agent to try to find other tenants to take over their tenancy. After agreeing to move out by the end of July 2020, the tenants apparently changed their minds, leading to the landlord's loss of a good prospective tenant whom the agent had secured for the landlord.

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.

Even though the tenants did not attend this teleconference hearing, I still must be satisfied that the landlord has provided sufficient evidence to warrant ending this tenancy early and issuing an Order of Possession.

Based on the undisputed sworn testimony of the landlord and their agent, I find that sufficient evidence has been provided to warrant an end to this tenancy for the following reasons outlined in the first portion of section 56, as outlined above.

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 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.

In considering this second test, I have taken into account that the timing of this hearing delayed consideration of the landlord’s application for an early end to this tenancy until after the corrected effective date of the landlord’s undisputed 1 Month Notice occurred. At the time the landlord applied for dispute resolution on August 14, 2020, they believed that the tenant was already overholding from the incorrect July 28, 2020 effective date that the landlord identified on their 1 Month 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. Based on the sworn testimony before me, I find that the tenants have failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are 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, August 31, 2020.

I find that consideration of the circumstances surrounding the issuance of the 1 Month Notice and the corrected effective date are relevant in assessing the second part of the test outlined above

I allow the landlord’s application for an early end to this tenancy and an Order of Possession for the following reasons:

- the tenants did not appear at the hearing to dispute the landlord’s application to end this tenancy;
- there is sufficient undisputed evidence to confirm that the landlord had a justified reason for believing at the time they applied for the early end to tenancy that it would be dangerous and unsafe to wait until an Order of Possession could be obtained on the basis of the 1 Month Notice;

- the tenants did not apply to cancel the 1 Month Notice and are presumed to have accepted that their tenancy ended on the corrected effective date of the 1 Month Notice; and
- the corrected effective date of the 1 Month Notice has already passed.

Conclusion

I allow the landlord's application for an early end to this tenancy. 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 dismiss the landlord's application to recover their filing fee from the tenants, as I find that their application for a monetary award for this item was not properly served to the tenants in accordance with section 88 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: September 01, 2020

Residential Tenancy Branch