



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 for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for an order to end the tenancy early and receive an order of possession due to health or safety reasons under section 56 of the Act, and to recover the cost of the filing fee.

An agent for the landlord JT-G (agent) and a witness DM (witness) attended the teleconference hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained and an opportunity to ask questions was provided to the agent. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Proceeding dated August 13, 2020 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the female tenant on August 14, 2020 at the rental unit and that the tenant accepted the paperwork from the agent. Given the above, I find the tenants were duly served under the Act on August 14, 2020. As the tenants did not attend the hearing and was deemed served, I consider this application to be undisputed by the tenants.

Preliminary and Procedural Matter

The agents confirmed the email addresses for the parties at the outset of the hearing. The agent stated that they understood that the decision and order of possession would be emailed to them for service on the tenants. The tenants will be sent the decision by email.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession under section 56 of the Act for health or safety reasons?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on January 1, 2020.

The agent wrote in their application the following:

The tenants have sublet the property to drug dealers as confirmed by the neighbour and the RCMP and all the window on the back side of the house are smashed and there was fire started on two locations. One on the side of the main house and the second on the garden shed. Pictures will be attached with this document. The current tenants have indicated that they did not sublet the house but 2 guys overpowered them and moved in without their consent. They have stopped answering any of our calls.

The landlord submitted two photos of what the agent called “arson” by showing the vinyl siding of the home burned in two places. The first photo shows the burned and melted vinyl siding on what the agent stated was the northwest corner of the home. The second photo shows a much larger burn and melting of the vinyl siding on what the agent described as the southwest corner of the property. There are also photos of broken windows and what appear to be bullet holes in the home.

The witness, DM, testified that they have had many sleepless nights and have called the police many times regarding the following:

1. Knocking on windows and the home at all times throughout the night
2. Front windows being smashed out from someone inside the rental property
3. Rocks being thrown at the home and at one point bounced off a board and almost hit the witness
4. Gunshots being reported to RCMP
5. RCMP doing surveillance from the home of the witness for a period of 2 days

The agent stated that they have been advised that the occupants are armed and have guns and the landlord is seeking an immediate order of possession so that the RCMP can attend with the landlord to serve the order of possession.

Analysis

Based on the undisputed testimony and undisputed documentary evidence provided during the hearing, and on a balance of probabilities, I find and I am satisfied that the tenants have seriously jeopardized the health or safety or a lawful right or interest of the landlord and has committed an illegal act, arson and mischief, 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.

Section 56 of the Act applies and states:

Application for order ending tenancy early

56(1) A landlord may 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 [*landlord's notice: cause*], and
- (b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

- (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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

[Emphasis added]

I am also satisfied that it would be unreasonable and unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act. I find the actions of the tenants or their guests, and the documentary evidence before me to support that the tenancy must end immediately. I have no direct evidence from the tenants to deny that the occupants were not invited. Furthermore, I find that arson alone is reason enough to end this tenancy as there are two areas of the home that were set on fire, with one being severe and both of which could have had led to loss of life. Therefore, pursuant to section 56 of the Act, I grant the landlord an order of possession for the rental unit effective **immediately**. I find the tenancy ended the date of this hearing, September 18, 2020 pursuant to section 62(3) of the Act.

Conclusion

The landlord's application is successful.

The tenancy ended this date, September 18, 2020.

The landlord is granted an immediate order of possession. The tenants must be served with the order of possession and the landlord is recommended to seek police assistance before attending the rental property.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord for service on the tenant. This order may be enforced through the Supreme Court of British Columbia.

As the landlord's application had merit, I grant the landlord the recovery of the \$100.00 filing fee. I authorize the landlords to deduct the amount of \$100.00 the tenants' \$875.00 security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to section 62(3) of the Act. I find the tenants' security deposit is now \$775.00 as a result.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 18, 2020

Residential Tenancy Branch