



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlords filed an Application for Dispute Resolution on August 14, 2020 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlords. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 21, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlords attended the hearing; the tenant did not.

The landlords stated that they delivered notice of this dispute resolution to the tenants delivering registered mail. Additionally, they taped copies of the notice prepared with their evidence to the door of the rental unit. They provided a document entitled ‘proof of service’ to show their sending of the notice on August 18, 2020 separately to each tenant.

The landlord stated that the lower unit tenants – who live under the tenants in this matter – gave information to them that the upper tenants threw their copy on the ground towards the unit below. On August 23, one of the tenants messaged the landlords to state that they received this paperwork from the landlords.

From what the landlords presents here on notifying the tenant of this hearing, I am satisfied they served the tenant notice of this hearing in a method prescribed by the Act.

The tenants did not attend the hearing and did not provide any documentary evidence in advance.

Issue(s) to be Decided

Are the landlords entitled to an order of possession that ends the tenancy for cause and without notice by section 56 of the *Act*?

Are the landlords entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlords' application for an early end of the tenancy for cause. After taking an oath from the landlords, I gave them the opportunity to speak to the issue.

The landlords confirmed the details of the tenancy agreement they provided as evidence for this hearing. The start date was March 15, 2020 for a fixed term ending one year later. The landlords signed the agreement on March 5, 2020 and one of the tenants signed on March 11, 2020. The rent amount is \$1,900.00 and the tenants paid a security deposit of \$950.00 on March 6, 2020. They stated the second tenant was named in the agreement and does live in the unit; however, they did not sign the agreement.

The landlords apply for an end of tenancy based on the "immediate and severe risk to the rental property, other occupants or the landlord." They served a One-Month Notice to End Tenancy for Cause (the "One Month Notice") on July 26, 2020 for reasons involving significant interference with others, the jeopardy to health or safety of others, and significant risk to the landlords' property. That document specified the end-of-tenancy date of August 31, 2020. By that date, the tenants had not communicated any information on a move-out; though by September 16 the tenants were found to still be in the unit.

In a timeline document prepared for the hearing, the landlords state: "Since we served the eviction notice, the disturbing and aggressive behavior has increased, leaving neighbours more afraid and calling us and police repeatedly."

The landlords provided documents and photos in addition to their oral testimony to show how the conduct of the tenants constitute a reason to end the tenancy in an expedited fashion. The documents photos show what the landlords present as a high risk of danger due to the frequency of bears arriving to the unit and rummaging through garbage boxes. They installed a “bear box” for the tenants to use to effectively contain and isolate garbage; however, the tenants here insist on not using the box and continue to leave random garbage strewn about. This was after repeated conversations with the tenants about this issue.

Additionally, photos show cigarette remains on the ground of the property. The entire property as described by the landlords is “non-smoking”. The cigarette ashes and remnants pose a significant hazard in fire season.

The landlords presented a 15-page submission that includes a timeline of events in the tenancy from the start until the time when they served the One Month Notice. This information is centered on the grounds they indicated on that document. Relevant to this expedited process are the following points:

- the lower unit tenants have to leave their unit on occasion because of the “incessant fighting” of the tenants;
- the behaviour on one tenant is “aggressive, violent, erratic and scary”;
- police were called a number of times, with “multiple cars in attendance” – one visit resulted in a chase through the neighbourhood;
- noise continues in the late evening – the children of the tenants are heard “yelling and crying for their parents to stop”;
- the lower tenants do not feel safe in their own home with ill physical effects observed by neighbours, one of whose messages appears in the landlords’ evidence;
- visits to the upper unit occupied by the tenants have people banging on the doors or walls demanding money and very brief car visits – the landlords speculate this could be drug transactions;
- one of the tenants is “well known” to the RCMP – the landlords provide there are a number of assault charges and a “breach of release order outstanding”.

The landlords also provide they attempted to resolve the issues. This results in messages in reply from one of the tenants that are “aggressive language, threats and swearing.” The timeline provides detail on visits from police and the tenants aggressive response messages to the landlords about the tenants downstairs.

Analysis

Section 56 of the *Act* provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 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 tenancy were given under section 47 [*landlords' notice: cause*], and
 - (b) granting the landlords an order of possession in respect of the rental unit.

Section 56(2) sets out two criteria. First, the landlords must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlords to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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 landlords of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlords or another occupant;
 - (iii) put the landlords' property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlords' 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 landlords;
 - (v) caused extraordinary damage to the residential property . . .

I have considered the evidence of the landlords concerning the conduct of the tenants primarily.

I find there is sufficient evidence to show the tenants have been the cause of several incidents that are those specified by section 56(2) above. On that basis, the evidence presented by the landlords shows a pattern of significant interference with other tenants. I find the tenants are also placing the health of other tenants at risk with ongoing incidents leaving the tenants afraid to stay in their own rental unit. I find the evidence credible that the tenants below have left home on more than one occasion to escape the noise and threatening behaviour which they find quite intrusive into their quiet enjoyment of the unit below. This consideration applies to security and safety as well.

There are also elements of risk more related to the geographical area of the rental unit, where risk of wildlife intrusion requires management of household waste. The evidence of the landlords establishes that the tenants do not abide by the management. This increases the frequency of wildlife intruding, increasing risk.

These concerns relate also to strict guidelines in an area with a high risk of fire damage. I find the evidence shows the tenants' ignorance of directives on this issue.

First, from the evidence I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the landlords to wait for a set-period Notice to End Tenancy to take effect. The evidence established by the landlords shows they previously served a One-Month Notice that the tenants did not dispute. The tenants did not abide by the set move-out date specified on that document which was duly served in accordance with the *Act*. In short, the landlords have waited for the One-Month Notice to take effect. They stated that matters were "escalating" since that time – I find this merits an expedited end to the tenancy. I so grant an Order of Possession in line with this rationale.

As the landlords were successful in this application, I find they are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

For the reasons above, I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with

this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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*.

Dated: September 22, 2020

Residential Tenancy Branch