



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 landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

Landlord M.A. testified that he posted this application for dispute resolution on the tenant's door. Landlord J.B. testified that she witnessed landlord M.A. post this application for dispute resolution on the tenant's door on September 19, 2020. I find that this application for dispute resolution was deemed served on the tenant on September 22, 2020, three days after its posting, pursuant to section 90 of the *Act*. I find that this application was served on the tenant in accordance with section 89(2)(d) of the *Act*.

Issues to be Decided

1. Are the landlords entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. This tenancy began on April 28, 2020 and is currently ongoing. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$650.00 was paid by the tenant to the landlords. The subject rental property is a basement suite in a house and the landlords live above the tenant.

The landlords testified that the tenant is a drug user who habitually falls asleep with the stove on. The landlords testified that two to three times a week their fire alarm goes off because the tenant has fallen asleep with the stove on. The landlords testified that they have to run down and wake the tenant up and that the tenant appears to be on drugs when they wake him up. The landlords testified that the fire department has been called on more than one occasion and that the subject rental property is full of smoke and ash when they enter the unit to wake up the tenant.

The landlords entered into evidence a video which shows the landlords opening the front door to the subject rental property and smoke billowing out. The landlords can be heard speaking in another language, though 911 can be heard in English. The landlords testified that they called 911 and the fire department attended.

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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

I accept the landlords' undisputed testimony that the tenant habitually leaves the stove of the subject rental property on while he sleeps. I find that this negligent action:

- significantly interferes with and unreasonably disturbs the landlords of the residential property;
- seriously jeopardizes the health or safety and a lawful right and interests of the landlords; and
- puts the landlords' property at significant risk.

I find that it would be unreasonable and unfair to the landlords to wait for a notice to end the tenancy under section 47 of the *Act* to take effect because the tenant could start a

fire in that period of time that could injure the landlords and or seriously damage the landlords' property. Therefore, pursuant to section 56 of the *Act*, I find that the landlords are entitled to a Two-Day Order of Possession.

As the landlords were successful in their application for dispute resolution, I find that the landlords are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlords are entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service 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.

The landlords are entitled to retain \$100.00 from the tenant's security deposit, pursuant to section 72(2) 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: October 22, 2020

Residential Tenancy Branch