



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET, FFL

Introduction

The landlord seeks an order to end a tenancy early and for an order of possession, pursuant to section 56 of the *Residential Tenancy Act* ("Act"). In addition, he seeks recovery of the application filing fee, under section 72 of the Act.

The landlord filed an urgent application for dispute resolution on September 25, 2020 and a hearing was held on November 2, 2020. The landlord attended the hearing and was given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. Neither tenant attended the hearing, which commenced at 9:30 AM and ended at 9:48 AM.

The landlord gave evidence that he served the Notice of Dispute Resolution Proceeding package by way of Canada Post Registered Mail on September 29, 2020. A copy of the receipt and tracking number were submitted into evidence. Based on this undisputed oral and documentary evidence I find that the tenants were served in accordance with the Act and the *Rules of Procedure*.

Issues

1. Is the landlord entitled to an order under section 56 of the Act?
2. Is the landlord entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application. Only relevant evidence necessary to explain my decision is reproduced below.

The tenancy began on June 1, 2019 and monthly rent is \$3,500.00. The tenants paid a security deposit of \$1,700.00 and a pet damage deposit of \$300.00. A copy of the tenancy agreement was submitted into evidence.

In this dispute, the landlord seeks an order under section 56 for various reasons, including but not limited to the tenants' refusal to allow plumbers and other tradespersons onto the property in order to assess and repair damage. The description in the landlord's application reads as follows:

Mr [S] uses abusive language swore at me when Delivering notice to end tenancy September 16th, 2020. Water leak during his time away drywall and carpet damage. When we come to know dispatched plumber to site. Tenant refused plumber to enter home as he is away. Mr [JM] witness tenant agree to fix all damage September 1st . He did not pay rent for last Six months

The landlord has visited the property several times in an attempt to collect rent, which the tenants have not paid since early 2020. (Arrears are well over \$20,000 at this point.) In early September the tenant told the landlord that he would pay the full outstanding rent if the landlord let him grow marijuana. The landlord said no.

The landlord reiterated that he was trying to bring a plumber in, and the tenants denied access. Indeed, the tenants have chained the gate, preventing any sort of access to the property. As for the damage, the landlord testified that it is fixable, but not until someone is actually permitted into the property. Photographs of the damage were in evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 56 (1) of the Act permits a landlord to 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, and

(b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56(1), I must be satisfied that

- (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.

In this case, the tenants' chaining up of the gate and refusing to permit the landlord, or to permit tradespersons hired by the landlord, to enter the property – despite having, and providing, proper notice under the Act – is, I find, a significant interference with the landlord's lawful right and interest to, and in, the property. There is no justifiable reason why the tenants have the lawful right to interfere in this manner, and as such I find that the landlord has proven a ground under section 56(1)(i) of the Act. Further, I am satisfied that it would be unreasonable to the landlord to wait for a notice to end the tenancy under section 47 of the Act. The landlord has repeatedly, and quite patiently, tried to resolve these issues with the tenants, who have responded by chaining the gate and refusing any lawful entry into the rental unit or the surrounding property.

For these reasons I find that the landlord is entitled to an order under section 56 of the Act. Further, I hereby order that the tenancy shall end two (2) days from the date that this Decision is received by the landlord. An Order of possession is issued to the landlord in conjunction with this Decision.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was successful, I grant his claim for reimbursement of the \$100.00 filing fee. A monetary Order is issued to the landlord in conjunction with this Decision.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenants and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$100.00, which must be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 2, 2020

Residential Tenancy Branch