



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, and to recovery the cost of the filing fee.

Executor BS (executor) and a witness for the landlord SS (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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated October 23, 2020 (Notice of Hearing), the application and documentary and digital evidence were considered. The executor provided affirmed testimony that the Notice of Hearing, application and documentary/digital evidence was served on the tenant both by registered mail on October 24, 2020 and by posting to the tenant's door on October 24, 2020. The executor provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the tenant and the rental unit address. The registered mail tracking number has been included on the Style of Cause for ease of reference.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. In addition, section 90 of the Act stated that documents posted to the door are deemed served three days after they are posted. Therefore, I find the tenant was sufficiently served under the Act as of October 27, 2020. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the Act.

Given the above, the hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing. I find this matter to be undisputed by the tenant as a result of the above.

Preliminary and Procedural Matters

Firstly, the name of the executor was corrected to BS, Personal Representative of the Estate of VS, Deceased in accordance with the section 64(3)(c) of the Act and RTB Policy Guideline 43 – Naming Parties.

Secondly, the executor confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the executor did not have an email address for the tenant, the decision will be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession pursuant to section 56 of the Act?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

The executor stated that a written tenancy does not exist between the parties and was based on a handshake between VS and the tenant. The witness confirmed that there was never a security deposit paid during the tenancy by the tenant.

The executor has applied for an order to end the tenancy early based on the tenant taking over control of the entire house, instead of remaining in the basement, which is the only portion of the home that the tenant rents. The executor provided photo evidence to support that the tenant damaged the front door lock of the home by inserting and then breaking off a nail so that a key could not be inserted. In addition, the executor testified that the tenant has illegally changed the locks to the basement suite, broken three windows of the rental unit and is attracting bears and other wildlife by having a freezer full of meat outside where it has thawed out causing the landlord to pay hundreds of dollars to have the freezer and thawed meat removed based on an order from a conservation officer.

The executor stated that the tenant has not paid any rent for March to present, and has illegally taken over the entire home and has refused to allow entry to the executor, which has left the executor being unable to clean the upper portion of the home following the death of his father on May 20, 2020. The landlord presented a video, which showed a nail or similar object inserted in the front door of the home in which the basement is being rented. The executor is seeking an early end to the tenancy as a result and an order of possession.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided by the parties during the hearing, and on a balance of probabilities, I find the following.

I have considered the undisputed video evidence, photos and testimony which I find supports that the tenant has significantly interfered with and unreasonably disturbed the landlord by taking over the entire home beyond the basement rental unit. I find the upper portion of the home is an area of the home that the tenant is not renting, and I find amounts to trespassing. In addition, I find that there is sufficient evidence before me to support that the tenant engaged in illegal activity that has adversely the quiet enjoyment, security, safety and physical well-being of another occupant of the residential property by trespassing and mischief, the latter of which involved at least 3 broken windows of the rental unit.

Furthermore, I am also satisfied that it would be unreasonable and unfair to the executor to wait for a notice to end tenancy under section 47 of the Act. I find the actions of the tenants to be unreasonable and that there is no room in any tenancy for denying access to the home by damaging locks, trespassing and causing mischief. Therefore, pursuant to section 56 of the Act, I **grant** the executor an order of possession for the rental unit effective not later than **two (2) days** after on the tenant. I find the tenancy ended this date, November 9, 2020 pursuant to section 62(3) of the Act.

As the executor's application is successful, I grant the executor **\$100.00** for the recovery of the cost the filing fee under section 72 of the Act. A monetary order in that amount has been granted to the executor.

Conclusion

The executor's application is successful. The tenancy ended this date, November 9,

2020. The executor is granted an order of possession effective two (2) days after service on the tenant.

The executor is granted a \$100.00 monetary order for the filing fee. Should the executor require enforcement of the monetary order, the executor must first serve the tenant with the monetary order. This order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court. The tenant may be held liable for the costs associated with enforcing the monetary order.

This decision will be emailed to the executor and sent by regular mail to the tenant. The order of possession will be emailed to the executor for service on the tenant. This order may be enforced through the Supreme Court of British Columbia. Should the tenant refuse to vacate the rental unit, the tenant may be held liable for all costs associated with enforcing the order of possession and with the court bailiff.

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: November 9, 2020

Residential Tenancy Branch