



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, including an order of possession, under section 56 of the *Residential Tenancy Act* ("Act").

The landlord filed an application for dispute resolution on September 28, 2020 and a hearing was held on November 16, 2020. The landlord (along with an unnamed third party who provided some interpretation) attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

The landlord testified that he served the Notice of Dispute Resolution Proceeding package on the tenants by way of positing it on the door of the rental unit on October 1, 2020. This service was witnessed by a third party. Based on this undisputed evidence I find that the tenants were served in accordance with the Act.

Issue

Is the landlord entitled to an order under section 56 of the Act?

Background and Evidence

I have only reviewed and considered oral and documentary evidence which was relevant to determining the issues of this application. Only relevant evidence necessary to explain my decision is reproduced below.

The tenancy began March 5, 2020, monthly rent is \$1,800, and the security deposit was \$900. A copy of the written tenancy agreement was submitted into evidence.

The landlord gave evidence that the main reason he seeks an application under this section of the Act is because of the tenants' destruction of the property, along with other issues.

As stated in the landlord's application: "damaging the house, damaging the main windows, making noises, cursing, pee outside, break the agreement, unpaid rent".

On July 15, 2020 the landlord, who lives upstairs (the rental unit is a basement suite) heard lots of loud noise and music and pounding. The next morning, he went downstairs to investigate and, after the tenants permitted him entry, he observed that the main basement door had been smashed. Inside the basement suite he saw that every door was smashed. Outside of the house, next to an electrical panel, the house had been smashed in (either it had been kicked or been smashed with a hammer). There was frequent swearing and yelling in the rental unit, which caused alarm and distress to the landlord and his family upstairs. Despite asking the tenants to stop on at least three different occasions, the tenants persisted.

On August 3, 2020, one of the tenants told the landlord that one of the windows had been smashed (according to the tenant's message, a football had been accidentally thrown through the window). The tenant told the landlord that they would fix or repair the window; this did not happen. The tenants told the landlord on a few occasions that they would be moving out first at the end of August, then at the end of September, and then at the end of October. However, the tenants never moved out.

In support of his application the landlord submitted various photographs portraying the damages to the exterior of the house. In addition, text messages and other correspondence were tendered into 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, based on the undisputed oral and documentary evidence of the landlord, I find that the tenants engaged in illegal activity (that is, mischief, which is defined in section 430 of the *Criminal Code*) that has caused damage to the landlord's property. The smashing of doors, both interior and exterior, and the smashing in of an exterior wall, constitute illegal activity that without a doubt caused damage to the landlord's property. In addition, the numerous instances of yelling, swearing and making loud noises – which caused fright and alarm in the landlord's family (and which resulted in the police being called) – constitutes I find an unreasonable disturbance to the landlord.

Second, given the circumstances of the property damage and the ongoing behavior of the tenants, given that the tenants have failed to abide by any requests of the landlord to stop their behavior, and, taking into account the tenants' failure to vacate the property even after they said that they would, I find that it would be unreasonable to the landlord for him to have to wait for a notice to end the tenancy under section 47 of the Act.

Therefore, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order under section 56 of the Act.

Accordingly, pursuant to section 56(1)(a) of the Act, I order that the tenancy ends effective two (2) days after the order of possession is served on the tenants. Further, pursuant to section 56(1)(b) of the Act, I grant the landlord an order of possession.

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 landlord was successful, I grant his claim for reimbursement of the \$100.00 filing fee. The landlord is authorized to retain \$100.00 of the tenants' security deposit, after the tenants have vacated the rental unit, in full satisfaction of this award.

Conclusion

I HEREBY:

1. ORDER that the tenancy ends effective two (2) days from the date that the order of possession is served on the tenants; and,
2. 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.

If the tenants fail to comply with the order, the landlord may file and enforce the order in the Supreme Court of British Columbia.

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

Dated: November 16, 2020

Residential Tenancy Branch