



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:29 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witnesses for the landlord TG (apartment manager) and PC (maintenance supervisor) also attended. 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 landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) in person on November 19, 2020 at 2:59 P.M., in accordance with section 89(2)(a) of the Act. Two witnessed proof of service (RTB form 9) were submitted into evidence.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

01. an order for early termination of a tenancy?
02. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is their obligation to present the evidence to substantiate the application.

The landlord stated the tenancy started on March 15, 2018. Monthly rent in the amount of \$793.00 is due on the first day of the month. The landlord collected and holds the security deposit of \$367.50. The tenancy agreement was submitted into evidence.

The landlord affirmed on November 10, 2020 witness TG knocked at the tenants' rental unit's door for a fire alarm inspection. Tenant MP opened the door and physically assaulted TG by punching and pushing her. TG stated she hit the wall, fell on the floor and got several bruises from the physical violence. The police were called and are investigating tenant MP. A police file number was provided (the number is on the front page of this decision).

Witness PC said he saw TG one hour after she was assaulted and helped her.

The landlord submitted 14 photographs of TG's bruises taken on November 10, 2020.

An incident report dated November 10, 2020 was submitted into evidence. It states:

[...] I felt a painful jab to my right side then hear the door slamming as I was pushed back and fell against the hall wall on the other side of the hall.

ACTION TAKEN:

Complaint filed with the RCMP, RCMP photographed my injuries. I talked again to RCMP on 11 November 2020: RCMP officer stated they warned tenant they could be arrested for assault [...].

Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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.

Residential Tenancy Branch Policy Guideline 51 explains the importance of landlord providing evidence that is unreasonable or unfair to wait to end the tenancy with a one month notice:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;

- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the convincing and cohesive testimony provided by the landlord and witnesses TG and PC, incident report, 14 photographs and a police file number, I find tenant MP physically assaulted TG on November 10, 2020. I find that pursuant to section 56(2)(a)(ii) of the Act, tenant's MP behaviour seriously jeopardized the health and safety of the landlord.

If the landlord issued a notice for cause under section 47(1)(d), the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenants. Due to the significant risk tenant MP presents to the landlord, I find that pursuant to section 56(2)(b), it would be unreasonable for the landlord to be wait to end the tenancy by issuing a notice for cause.

I grant an order of possession effective two days after service on the tenants, pursuant to section 56(2)(a)(ii) of the Act.

As the landlord is successful in this application, the landlord is entitled to recover the filing fee.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order**. Should the tenants fail to comply with this order, this order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: December 03, 2020

Residential Tenancy Branch