



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

The landlords filed an Application for Dispute Resolution on November 20, 2020 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlords. The matter proceeded by way of a conference call hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on December 21, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenant did not.

The landlord stated that they delivered notice of this dispute resolution to the tenant by attaching the document to the rental unit door. They provided a document entitled ‘proof of service’ to show this method, attested to by a witness, took place on November 24, 2020.

The landlord in the hearing stated there was no further communication from the tenant directly to them. After their service of this notice to the tenant, the landlord’s staff informed them that the tenant was inquiring about making a different living arrangement.

From what the landlord presents here on notifying the tenant of this hearing, I am satisfied they served the tenant notice of this hearing in a method prescribed by the *Act*.

The tenant did not attend the hearing and did not provide any documentary evidence in advance.

Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by section 56 of the *Act*?

Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. After taking an oath from the landlords, I gave them the opportunity to speak to the issue. Their oral testimony stands as evidence in this matter.

The landlord confirmed details of the tenancy agreement; however, they did not submit a copy of the agreement for this hearing. The tenancy started on August 1, 2019. The rent amount is \$375, and the tenant pays on the first of each month.

The landlord applies for an end of tenancy based on the “immediate and severe risk to the rental property, other occupants or the landlord.” This is for an incident on November 20, 2020 in which the tenant assaulted another tenant in the building, as well as their guest. This was at the door of the other tenant’s unit, occurring at approximately 11:30 a.m. With the substance used being pungent and toxic to eyes and ears – to an extreme degree – the traces of the substance were abundantly clear to members of the building’s staff in attendance who were assisting the victim.

The landlord arrived to see police who attempted to find the tenant, who had fled from the scene. The landlord was not aware of any follow-up undertaken by the police on this incident.

The landlord provided an image taken from security footage camera that shows the tenant at the entrance of the other tenant’s unit, leaning in. The landlord described the image as that showing the tenant holding the can of toxic substance in their right-hand leaning in. According to the landlord, this was the moment of the incident.

Analysis

Section 56 of the *Act* provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or

urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may 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 tenancy were given under section 47 [*landlords' notice: cause*], and
 - (b) granting the landlords an order of possession in respect of the rental unit.

Section 56(2) sets out two criteria. First, the landlords must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlords to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

56(2) . . .

- (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 landlords of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlords or another occupant;
 - (iii) put the landlords' property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlords' 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 landlords;
 - (v) caused extraordinary damage to the residential property . . .

I have considered the evidence of the landlord concerning the conduct of the tenant and the incident in question.

I find there is sufficient evidence to show the tenant was the cause of the incident in question. This was an assault, and the landlord provided direct testimony that they observed the party affected and spoke to the police. I find this is an action that is specified by section 56(2) above, particularly subsections (a) (i) and (ii).

First, from the evidence I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the landlords to wait for a set-period Notice to End Tenancy to take effect. The landlord stated the tenant had queried property staff on other living arrangements, at some point between the incident date and the date of this hearing. I find this merits an expedited end to the tenancy in that the tenant maintains occupancy of the rental unit, with a high likelihood that there is no apparent alternate living arrangement in place. I so grant an Order of Possession in line with this rationale.

Conclusion

For the reasons above, I grant an Order of Possession to the landlords effective **two days after service of this Order** 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.

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*.

Dated: December 21, 2020

Residential Tenancy Branch