



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlords seek orders under section 56(1) of the *Residential Tenancy Act* ("Act"), and, recovery of the application filing fee under section 72 of the Act.

The landlords filed an application for dispute resolution on December 10, 2020 and a hearing was held on December 29, 2020. The landlords attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses; the tenant did not attend the hearing. The landlords testified that they served a copy of the Notice of Dispute Resolution Proceeding package on the tenant by way of posting it on the door of the rental unit on December 14, 2020 at approximately 6 PM. Service was witnessed by a third party, the landlord's wife. Based on this undisputed evidence I find that the tenant was served in accordance with the Act and the *Rules of Procedure*, under the Act.

Issues

1. Are the landlords entitled to orders under section 56(1) of the Act?
2. Are the landlords 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 meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The landlords are seeking orders under section 56 of the Act for the following reason, as described in their application for dispute resolution:

NO HEAT in HOUSE. [Tenant] removed the furnace from the home. Young family who rents upstairs has no heat. The tenant [name redacted] who owns 604-SCRAPIT assaulted another tenant who lives upstairs in another suite ([name redacted]). Mr. [name redacted] is a father of 4 young children and called the RCMP. RCMP file # [number redacted]. [name redacted] owns a scrap shop and recycled the furnace. This was in retaliation to the upstairs tenant.

The landlord testified that when the tenant moved in a few years ago the furnace, which is a forced air furnace, was old. The tenant sold the landlord a new furnace (or, a newer furnace) which was then installed.

The tenant then began to have issues with the upstairs tenants, who have children. After further violent interactions with the upstairs tenants, the RCMP became involved. In retaliation, the tenant disconnected the heat and then removed the furnace. As such, there is no heat for the upstairs tenants.

For the record, the tenancy began on October 1, 2019 and monthly rent is \$900.00. The tenant paid a security deposit of \$500.00 but the parties agreed to let the landlords retain this deposit to help pay for rent arrears. As such, there is no security deposit currently held in trust by the landlords. A copy of a rental application, but no tenancy agreement, was tendered into evidence by the landlords.

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 tenant's unauthorized and unlawful removal of the property's primary source of heat is, I find, a significant interference to another occupant of the residential property, a putting of the landlords' property at significant risk, and, what is essentially theft of the landlords' property, illegal activity that has caused damages to the landlords' property and which has adversely affected the quiet enjoyment, security, and safety and physical well-being of the other occupants of the residential property. Quite simply, there is no legally conceivable reason why a tenant may remove a furnace from a landlord's property. Further, it would, I find, and under these circumstances, be wholly unreasonable and unfair to the landlords and the other occupants of the residential property to have to wait for a notice to end the tenancy under section 47 of the Act.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for orders under section 56 of the Act.

Therefore, I order, pursuant to section 56(1)(a) of the Act, that the tenancy is ended effective immediately.

Further, I grant the landlords an order of possession in respect of the rental unit. The order of possession will be issued in conjunction with this decision, and the landlords will need to serve the order of possession on the tenant in order for it to take effect.

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 landlords were successful in their application, I grant their claim for reimbursement of the \$100.00 filing fee. A monetary order is also issued in conjunction with this decision to the landlords.

Conclusion

I grant the landlords an order of possession, which must be served on the tenant and 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 grant the landlords a monetary order in the amount of \$100.00, which must be served on the tenant. If the tenant fails to pay the landlords, then the landlords 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: December 29, 2020

Residential Tenancy Branch