



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIA BRITISH COLUMBIA, INC-RHOME
PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 11, 2020 (the "Application"). The Landlord applied for an order ending the tenancy early pursuant to section 56 of the *Residential Tenancy Act* (the "Act"). The Landlord also sought to recover the filing fee.

The Landlord filed an amendment setting out the full name of the Landlord which is reflected in the style of cause.

B.T. and P.B. appeared at the hearing for the Landlord. The Tenants appeared at the hearing with A.A., their son. I explained the hearing process to the parties who did not have questions when asked. The parties, other than Tenant K.M., provided affirmed testimony.

Tenant M.A. advised that Tenant K.M.'s name is wrong on the Application. P.B. for the Landlord asked that Tenant K.M.'s name remain as entered on the Application. I have left Tenant K.M.'s name as is given this is the Landlord's Application and P.B. did not want the Application amended.

I had evidence from the Landlord before me. I did not have evidence from the Tenants before me. I addressed service of the hearing package and Landlord's evidence. Tenant M.A. confirmed receipt of the hearing package. Tenant M.A. said they did not pay attention to the package and whether it contained the Landlord's evidence. A.A. said it looked like the Tenants received the Landlord's evidence. P.B. testified that all of the Landlord's evidence was served on the Tenants. Given the testimony of P.B. and A.A., I am satisfied the Tenants were served with the Landlord's evidence and I have considered the evidence.

A.A. testified that the Tenants submitted evidence online. There is no indication of this on the RTB file and there is no such evidence before me. A.A. did not have the evidence receipt in front of them and therefore could not confirm the information on it. Given this, I told the Tenants I would consider there to be no evidence from them before me as I do not have such evidence and I am not satisfied such evidence was properly submitted without confirming the information on the evidence receipt.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Landlord's documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started September 01, 2008 and was for a fixed term ending August 31, 2009. The tenancy then became a month-to-month tenancy. The parties agreed rent is \$1,095.00 per month.

B.T. testified as follows in relation to the basis for the Application. The Landlord is seeking an early end to the tenancy because of an ongoing cockroach infestation in the rental unit due to the sanitation conditions in the rental unit. The infestation has been ongoing since June 24, 2020. The Landlord has had a pest control company attend and treat the rental unit June 24th, November 19th, November 25th, November 27th, December 7th, December 16th and December 22nd. The infestation was not as bad after the June 24, 2020 treatment. The Tenants reported that the infestation was getting worse on November 19th. Thousands of cockroaches were found in the unit November 19th. The pest control company has treated the unit the best they can, but the Tenants have not been properly preparing the unit for the treatments. The cockroaches have gone into adjacent units, which have also been treated. Hallways and the office have had to be treated. The Landlord is having another treatment done on the hearing date.

P.B. testified as follows. The Tenants sent a note about a bug issue in the rental unit June 22, 2020. P.B. attended the rental unit and there were cockroaches on the walls and the carpet. There was a pile of garbage and dirty dishes in the kitchen. The kitchen was not clean. There was food on the counter and food in unsealed containers. A treatment was scheduled. The Tenants did not properly prepare for the treatments. The Tenants have not been cooperative in relation to this issue. The infestation has spread to other units and the halls.

B.T. and P.B. testified that the Tenants caused the cockroach infestation in the rental unit. P.B. testified that there has not been a cockroach issue previously. P.B. testified that the pest control company attends the rental unit building monthly and there has been no bug problem previously.

B.T. submitted that the cockroach infestation is causing damage to the building and inconveniencing other units because of the spread.

B.T. testified that the situation is urgent because of the spread and testified that the infestation is spreading faster than they thought it would. B.T. reiterated that the Landlord has had the pest control company attend to treat the infestation but that the Tenants are not properly preparing the rental unit. B.T. submitted that the Landlord does not know how else to make the Tenants understand the seriousness of the situation.

A.A. testified as follows. The Tenants had seen the pest control company on the property prior to the cockroach infestation in the rental unit. The infestation in the rental unit started in March or April and the Tenants spoke to P.B. about it. The Tenants tried to get ahead of the problem but there is poor communication between the Tenants and P.B. The Tenants did everything they were told to do in relation to the infestation issue. The only place in the rental unit where there were cockroaches was in the kitchen because they came in from the hall. The Tenants have been living in the rental unit for 15 years without a problem previously. Cockroaches became a problem in the rental complex a few years ago. The Tenants are properly preparing for the treatments.

Tenant M.A. provided testimony, the majority of which was about P.B. having poor communication skills.

In reply, P.B. denied that there has previously been a cockroach problem or that it started in another building in the rental complex.

The Landlord submitted documentary evidence including letters to the Tenants, letters from the Tenants as well as reports and documentation from the pest control company.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenants, or a person allowed on the property by the tenants, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a One Month Notice to End Tenancy for Cause issued pursuant to section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

Even accepting the testimony and submissions of B.T. and P.B., I am not satisfied the Landlord has proven the second part of the two-part test.

Orders of Possession issued pursuant to section 56 of the *Act* are reserved for the most serious of circumstances.

Although I am satisfied based on the evidence provided that there is a serious cockroach infestation in the rental unit, I am not satisfied that a pest infestation meets the high threshold of an urgent circumstance that justifies ending this tenancy without notice to the Tenants.

The Tenants have lived in the rental unit for more than 11 years. The cockroach infestation has been ongoing since at least June, six months prior to the Application being filed. There was a lapse of almost five months between the first treatment of the infestation and the second treatment. Pest infestations by their nature take time to address. All of these factors lead me to find that the situation is not so urgent that the tenancy needs to end pursuant to section 56 of the *Act*.

I find the situation should be dealt with through a One Month Notice issued pursuant to section 47 of the *Act*. I am not satisfied based on the evidence provided that requiring this would be unreasonable or unfair to the Landlord or other occupants.

Given the above, I dismiss the Application without leave to re-apply.

The Landlord is not entitled to recover the filing fee given they were not successful in the Application.

Conclusion

The Application is dismissed without leave to re-apply.

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: January 13, 2021

Residential Tenancy Branch