



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFT

Introduction

On December 30, 2020, the Landlords made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing, with S.F. attending as an agent for the Landlords. Tenant A.B. attended the hearing, with A.N. attending as an advocate for the Tenants. All parties in attendance provided a solemn affirmation.

S.F. advised that the Landlords served a Notice of Hearing package and some evidence by hand to the Tenant on January 8, 2021. She then advised that the Landlords served a Notice of Hearing package and some evidence to Tenant A.H. by posting it to the rental unit door on January 12, 2021. The Tenant confirmed that he received both packages and he took no position on how or when this second package was served. Based on this undisputed testimony, while the second Notice of Hearing package was not served within the timeframe requirements or in a manner in accordance with the *Act*, as the Tenant confirmed that these packages were received and had no opposition, I am satisfied that the Tenants were served the Notice of Hearing packages.

S.F. advised that additional evidence submitted to the Residential Tenancy Branch was not served to the Tenants. As this additional evidence was not served to the Tenants in accordance with Rule 10.2 of the Rules of Procedure, this late evidence has been excluded and will not be considered when rendering this Decision. However, as the Tenant confirmed that he received the evidence served with the Notice of Hearing package and that he could view the digital evidence as well, only this evidence will be accepted and considered when rendering this Decision.

The Tenant advised that he served their evidence to the Landlords by hand on January 15, 2021 and Landlord R.B. confirmed that he received this evidence. As this evidence

was served pursuant to the timeframe requirements of Rule 10.5 of the Rules of Procedure, this evidence has been accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2020, that the rent was currently established at \$4,000.00 per month, and that it was due on the first day of each month. A security deposit of \$4,000.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

When R.B. was questioned about the amount of a security deposit collected that exceeded the maximum allowable amount pursuant to Section 19 of the *Act*, he advised that he was not aware that there was a limit and that he believed he could collect this amount as the rental unit was furnished. As per Section 19 below, he was informed that this was not permitted and that the Tenants may deduct this overpayment from a future month's rent.

Limits on amount of deposits

19 (1) *A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.*

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

S.F. advised that the Tenants informed the Landlords in early December 2020 that there was a problem with a fridge in the bottom floor of the rental unit. R.B. investigated this issue and discovered that the Tenants had allowed an unknown person to move into this portion of the rental unit without the Landlords' consent. She stated that on December 16, 2020, R.B. then entered the rental unit as part of a coordinated real estate viewing and a propane camping stove was discovered on the countertop of the bottom floor of the rental unit. This bottom floor area consisted of a wet bar; however, this area was not intended for cooking as there was no stove or hood fan installed. Rather, there is a complete kitchen in the upstairs of the rental unit.

She stated that this camping stove operates with an open flame, is designed for outdoor use only, and is not safe for use inside the rental unit, especially given that there is no range hood to ventilate the area. She stated that the Landlords contacted their insurance company and discovered that they would not be covered in the event that this stove caused a fire. She testified that due to this hazard and the unauthorized occupant, the Landlords served the Tenants with a One Month Notice to End Tenancy for Cause on December 16, 2020. She advised that there were subsequent real estate viewings later that month and different electrical cooktops were found either on the countertop or stored somewhere in the bottom floor of the rental unit. The Landlords had warned the Tenants to refrain from using any cooking devices in the bottom floor. They submitted pictures and a video of the differing cooktops as documentary evidence, and it is their position that the Tenants' occupant is still cooking in the basement.

R.B. testified that after the discovery of this camping stove on December 16, 2020, he contacted the Tenants and advised them that the use of this stove indoors is not safe for their family and could endanger his property.

She also advised that during one particular realtor showing, the occupant of the Tenants threatened the realtor by stating, "I can be a good guy, or I can be a bad guy." In addition, he threatened R.B.'s son by stating, "Why don't you come up here and we can settle this?" R.B. confirmed this exchange. This incident was not reported to the police and there was no physical altercation between the parties.

The Tenant advised that on December 16, 2020, he conducted a walkthrough of the rental unit before the real estate viewing and there was no camping stove on the counter in the basement of the rental unit. He stated that he was "not suggesting how it

got there”, but when he returned after the inspection, it appeared on the countertop. However, he could not provide an explanation for how it appeared there. He testified that as soon as he was informed by the Landlords of this stove, it was removed immediately. He submitted that this camping stove was never used and there is no evidence of such. He stated that there was no evidence that several other cooktops were discovered after this incident, and he stated that the rental unit is not at risk.

A.N. acknowledged that the camping stove was a breach and that the Tenants accepted this; however, it was removed immediately. He stated that the occupant of the Tenant never cooked in the basement area and that this person will be leaving by the end of the month regardless. He confirmed that while the interaction between the occupant and the realtor may have been “heated”, the police were never called. He stated that there is no risk to the property as there is no ongoing breach.

A.N. then made submissions that he was “pretty sure” that the occupant of the Tenants was an avid camper, that this person was unpacking his belongings, and that this camping stove was placed on the countertop by this occupant. When he was asked if he was speculating, if he had witnessed this, or if this occupant had told him this, he could not provide a clear answer. He then appeared to suggest that this occupant provided this account to the Tenant.

The Tenant did not confirm that he was provided this alleged account by this occupant. However, he stated that this occupant told him that the stove was never used but was simply on the counter for cleaning purposes. He confirmed that he had no authority from the Landlords to have this person move into the rental unit. He claimed that this person moved in approximately mid-December 2020; however, when he was asked when he was warned about this person, he provided contradictory testimony about dates of when this person moved in and when he was asked by the Landlords to have this unpermitted occupant move out. He stated that this occupant lived downstairs but only cooked in the upstairs kitchen. Finally, he confirmed that he was not present during the altercation between his occupant and the realtor, so he could not speak to the details of this incident.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlords to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants, or a person permitted on the residential property by the Tenants, have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Furthermore, given the contradictory testimony and positions of the parties, I find that I must also make a determination on credibility.

When reviewing the evidence before me, I find it important to note that the Tenants allowed an unauthorized occupant to move into the rental unit without the Landlords' knowledge or written consent, that this person had lived there since at least early to mid-December 2020, and that this person would not be moving out until the end of January 2021. When the Tenant was asked when this person moved in and when he was advised by the Landlords that this unauthorized person must vacate the rental unit, the Tenant provided vague and contradictory answers. I find this caused me to doubt the reliability or the truthfulness of his submissions.

Furthermore, it was evident in my view that the Tenants were informed by the Landlords that this was unacceptable at least a month prior to the hearing. I considered the

Tenant's testimony and his demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. However, I find it contrary to common sense and ordinary human experience that the Tenants would only have the unauthorized occupant vacate the rental unit some six weeks after being warned of this by the Landlords, despite being warned that this would jeopardize their tenancy. I find that this demonstrates that after moving an unknown party into the rental unit without the Landlords' knowledge, the Tenants cared little to rectify this in a timely manner.

Moreover, when the Tenant made submissions on his explanation of the camping stove, he made an ambiguous statement that he was "not suggesting how it got there", and it is not clear to me what this meant. He then claimed that it mysteriously appeared on the countertop later unbeknownst to him. A.N. then made submissions about this camping stove, and he provided statements about this occupant's actions that he was "pretty sure" of. However, when he was asked how he knew this information, he confirmed that he neither witnessed the occupant place this stove on the countertop, nor did this occupant tell him that this was what transpired. He then claimed that the occupant disclosed this to the Tenant, but the Tenant did not confirm that the occupant stated this. Rather, the Tenant then stated that the occupant advised him that it was on the countertop for cleaning purposes only.

When reviewing these submissions on the camping stove, it is not clear to me why the Tenant would initially make the vague statement that he was "not suggesting how it got there" if he knew it was placed on the countertop for cleaning purposes, or why he would not just state this in the first place. I find that this contradiction causes me to doubt the reliability of the Tenant's submissions. Moreover, I note that the propane tank was connected to the camping stove while it was on the countertop. I find it unusual that this would have been connected if the occupant was simply cleaning the stove. Given that I am already doubtful of the legitimacy of the Tenant's submissions, I find that these additional inconsistencies cause me to be dubious of the credibility of the Tenant's submissions on the whole.

Furthermore, there was insufficient evidence to corroborate any of A.N.'s submissions on this matter. In fact, the explanation that he proposed appeared to be entirely speculative or worse, fabricated in a vain attempt to provide an alternate account for how this camping stove would have appeared on the countertop. Given that A.N. did not witness this, and was not advised of this by the occupant, and given that the Tenant did not confirm A.N.'s suggestion that the occupant informed the Tenant that he was unpacking the stove, I give no weight to A.N.'s submissions. Instead, I find that A.N.

lacks credibility and that his submissions were specious, unfounded, and ultimately detrimental to the Tenant's case.

Based on these doubts created by the Tenant and by A.N., I find that I prefer the Landlords' evidence on the whole. I find it more likely than not that the occupant had used the camping stove in the rental unit. Furthermore, the Landlords submitted evidence of an electrical cooktop with a pan on top of it, on the countertop in the basement area. From this, I find it more likely than not that once the Tenants were advised that the occupant could no longer use the camping stove indoors, that this person then commenced cooking with this other electrical cooktop, despite the basement not being equipped or designed for that purpose.

Finally, with respect to the altercation between the realtor and the occupant, as neither the Tenant nor A.N. were present for this incident, I am satisfied that the submissions of what transpired are undisputed from the Landlords. While a physical altercation may not have occurred and while the police may not have been notified, I accept that the occupant threatened R.B.'s son by stating, "Why don't you come up here and we can settle this?" and that he stated "I can be a good guy, or I can be a bad guy." While it is possible that these threats were hollow, they are still completely unacceptable and inappropriate.

When assessing and weighing the totality of the evidence, I found that much of the Tenant's testimony and submissions had little to do with the matter at hand. He was more concerned and focused on irrelevant matters not pertinent to the Landlords' Application, and it was apparent that he was attempting to portray himself as the wronged party.

Ultimately, I am satisfied that the Tenants rented out a portion of the rental unit without the Landlords' written consent and that the Tenant demonstrated a pattern of deceit and untruthfulness during the hearing. Should the tenancy continue, I am not persuaded that the Tenants will remove this occupant, nor do I believe that this person will not continue to cook in some manner in the basement. Furthermore, I am satisfied that this occupant made threats that were more than veiled, and should the tenancy continue, it is uncertain how this occupant may react. As such, I find that the combination of the behaviours and actions of the Tenants and/or their occupant were likely intentional, malicious, and that they pose a danger that would fall into the categories of: seriously jeopardizing the health or safety or a lawful right or interest of the Landlord and putting the Landlord's property at significant risk.

The Landlords must also demonstrate that “it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 for cause” to take effect. Based on the consistent evidence and testimony of these troublesome past and current behaviors, I accept that the Tenant’s untruthfulness, in combination with the occupant’s unpredictable behaviours, would likely cause a genuine concern for the ongoing safety of the property and of any persons that may attend the rental unit.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlords to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlords have provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlords are entitled to an Order of Possession.

As the Landlords were successful in this claim, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to the offsetting provisions of Section 72 of the *Act*, I permit the Landlords to retain \$100.00 from the security deposit to satisfy this debt.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. 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.

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: January 20, 2021

Residential Tenancy Branch