



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Entre Nous Femmes Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

This expedited hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order for an early termination of tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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.

The landlord attended the hearing, represented by VL ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant the Notice of Expedited Hearing via registered mail on January 22, 2020. The tracking number for the mailing is recorded on the cover page of this decision. The landlord also filed a proof of service document in accordance with Rule 10 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The landlord also testified that last night, the tenant texted the landlord asking what the hearing is about. I am satisfied the tenant was effectively served with the landlord's Expedited Hearing package five days after it

was sent via registered mail in accordance with sections 89 and 90 of the Act, on January 27, 2020.

This hearing was conducted in the absence of the tenant in accordance with rule 7.3 of the Rules.

Issue(s) to be Decided

Should this tenancy end early?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on September 1, 2020. A security deposit of \$524.00 was collected by the landlord which the landlord continues to hold. The landlord testified that rental unit consists of a self contained townhouse unit with 4 or 5 units alongside it. The housing is located in a family oriented subsidized housing complex.

Before the tenant moved in, there were no issues with violence, disturbances or illicit drugs. Since the tenant moved in, the neighbouring units have witnessed suspected drug dealing at the tenant's front door and heard the tenant engaged in sexual activity with the windows open, causing anxiety for the neighbour's children who heard the activity in progress.

On January 18th, the landlord received a text from the tenant's neighbours who advised the landlord that the tenant's door had been kicked in by an unknown person. The door was left wide open and was fully accessible at this point. The neighbour was concerned for the tenant's two children, both under 3 years of age, and proceeded to enter the tenant's unit. While there, the neighbour found the tenant's unit to be in disarray with graffiti on the walls, some of which was carved directly into the walls. Drug paraphernalia was found, including a crack pipe inside an eyeglass case left out in the open. The case was decorated with dinosaur stickers which the landlord surmises could attract children wishing to investigate. Photos taken by the neighbour on January 18th were submitted as evidence. The photos depict the damage to the walls from the tenant's graffiti, as well as open drugs and drug paraphernalia. Police were called to investigate the break in. The landlord testified that the tenant's door was then closed and locked although the door jamb is still broken.

On November 8th, the tenant was heard engaged in loud sexual activity by the neighbours and their children. In the letter signed by 8 of the tenant's neighbours, one neighbour's 10 year old child heard the noises and was "traumatized" by it. A letter was

sent by the landlord to the tenant advising her that the excessive noise could be heard by her neighbours and asks that this does not happen again.

The landlord testified that the tenant has not paid rent for the month of February. She served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 2nd and the tenant did not file an Application for Dispute Resolution to dispute the notice or pay the outstanding rent. The landlord has not yet filed an Application for Dispute Resolution seeking an Order of Possession based on the notice as this hearing was coming up. The landlord testified that the tenant texted the landlord last night indicating she will be hiring a moving truck.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)

...

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).

In this case, the landlord provided undisputed testimony, corroborated by a letter signed by 8 of the tenant's neighbours indicating the tenant's door was kicked in by an unknown person. Given the photographic evidence of the drug paraphernalia in the rental unit, the landlord has satisfied me that the tenant is engaging 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. I concur with the landlord's submission that a child could easily come into contact with the tenant's illicit drugs and be harmed by them. Further, the photos taken while the unit was left wide open provides sufficient evidence to satisfy me that the tenant has caused extraordinary damage to the rental unit.

I find that it would be unreasonable for the landlord to wait for a One Month Notice to End Tenancy for Cause to take effect, given the dangerous nature of illicit drugs being consumed in the rental unit and the evidence that the tenant's door was left wide open after being kicked in. I find the safety of the neighbours and their children would be in imminently compromised if this tenancy were to continue. I also find that the rental unit could suffer from more vandalism caused by the tenant or her guests if this tenancy were to continue. For these reasons, I find the landlord has sufficient grounds to end this tenancy early. The landlord is awarded an order of possession effective 2 days after service upon the tenant.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: February 16, 2021

Residential Tenancy Branch