



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- An early end to the tenancy pursuant to section 56 of the Act; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord K.T. (the Landlord), who provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing were personally served on the Tenant on February 19, 2021, in the presence of a witness, the day after they became available to them by the Residential Tenancy Branch (the Branch) as required. The Landlord provided me with a witnessed and signed proof of service document stating that the above noted documents were personally served by them on the Tenant at 4:22 P.M. on February 19, 2021, in the presence of the witness N.N. As a result of the above and in the absence of any evidence to the contrary, I find that the Tenant was personally served with the above

noted documents for the expedited hearing in accordance with the Act and the Rules of Procedure on February 19, 2021.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. As I am satisfied that the Tenant was properly notified of the hearing and the Application as set out above, and the Landlord attended the hearing on time and ready to proceed, the hearing therefore proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Preliminary Matters

Although the Landlord did not list a room number for the Tenant in the Application, at the hearing the Landlord testified that the Tenant rents bedroom #1 in a basement suite shared by other tenants in common, who are also tenants of the Landlord under separate tenancy agreements. For the sake of clarity, the Application was therefore amended by me at the hearing pursuant to rule 4.2 of the Rules of Procedure, to accurately reflect the bedroom number rented by the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the Act?

Is the Landlord entitled to the recovery of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The Landlord stated that the Tenant rents a single room from them in a three bedroom basement suite, where other tenants of the Landlord also reside. As a result, the Landlord stated that the Tenant shares common space, including a bathroom, living

room, and kitchen, with other tenants in common who have separate tenancy agreements with the Landlord. The Landlord stated that they also reside at the property in a different unit. The Landlord stated that the six month fixed term tenancy commenced on January 1, 2021, that rent in the amount of \$750.00 is due on the first day of each month, and that a \$350.00 security deposit was paid by the Tenant, which they still hold in trust.

The Landlord testified that there have been significant ongoing issues with the Tenant since the start of the tenancy less than 2 months ago, including frequent and significant noise disturbances to them and other occupants of the property on a daily basis, police involvement at the property as a result of the Tenant and the Tenant's guests, and ongoing suspected illegal activity on the part of the Tenant and their guests, including suspected illegal drug use, bicycle thefts and the theft of a former tenant's mail and bank card. The Landlord stated that the Tenant has also caused extraordinary damage to the property, including the flooring of several rooms and the bathtub, in the short time that they have resided there, due to constant cleaning, repairing and spray painting of numerous bicycles on a daily basis. Further to this the Landlord stated that the Tenant has significantly interfered with the use and quiet enjoyment of the rental unit and residential property by the other tenants sharing common space with them, as multiple bicycles and bicycle parts litter the common spaces of the rental unit, including the entrance, living room, and bathroom. Finally, the Landlord stated that the Tenant recently barricaded themselves in the rental unit on January 18, 2021, resulting in damage to the property and police involvement and attendance.

The Landlord stated that they receive daily complaints about noise disturbances, and loss of use of common space caused by the Tenants actions and the actions of their guests from the tenants who share common space with them and other occupants of the property, and that they themselves are routinely disturbed by the Tenant and their guests at all hours of the day and night, despite living three floors above the Tenant. The Landlord stated that a long term tenant of the property even moved out a few days ago as a result of the ongoing issues caused by the Tenant. Given the frequency and severity of the disturbances and issues caused by the Tenant and their guests and the significant impact they are having on other occupants right to use and quietly enjoy the rental unit and property, the Landlord sought an early end to the tenancy as soon as possible pursuant to section 56 of the Act. The Landlord also sought recovery of the \$100.00 filing fee.

The Landlord submitted photographs, written statements from themselves and other occupants of the residential property, and copies of text messages between

themselves, the Tenant, and other occupants of the property, as well as copies of two recently issued notices to end tenancy for unpaid rent and cause, in support of their Application.

No one attended the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

Section 56 of the Act states the following with regards to ending a tenancy early:

Application for order ending tenancy early

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

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

- (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.
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Based on the uncontested documentary evidence and affirmed testimony before me for consideration, I am satisfied on a balance of probabilities that a tenancy to which the Act applies exists and that the Landlord has cause to end the tenancy early pursuant to section 56 of the Act because the Tenant or a person permitted on the property by the Tenant has 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 interest of the Landlord or another occupant, and caused extraordinary damage to the rental unit. I am also satisfied, given the serious nature of the incident on January 18, 2021, and the frequency and severity of noise and other disturbances suffered by the Landlord and the other occupants of the property, including other tenants of the Landlord who share common space with the Tenant, that it would be unreasonable or unfair to the Landlord and the other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

Based on the above and pursuant to section 56 of the Act, the Landlord is entitled to an Order of possession effective two days after service of the order on the Tenant.

Pursuant to section 72 of the Act, the Landlord is also entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee. The balance of the security deposit must be dealt with in accordance with the Act.

Conclusion

Pursuant to section 56 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order

may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court. The tenant is cautioned that costs of such enforcement are recoverable from them by the Landlords.

Pursuant to section 72 of the Act, the Landlords are also entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee. The balance of the security deposit must be dealt with in accordance with the Act.

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: February 26, 2021

Residential Tenancy Branch