



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society and
[tenant name suppressed to protect privacy]

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 two agents for the Landlord Y.B. and R.M. (the Agents), both of whom provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Agents were 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 Agents testified that the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package for the Expedited Hearing, including a copy of the Application and the Notice of Hearing, were posted to the door of the Tenant's rental unit on February 9, 2021, by Y.B. in the presence of a witness R.M. Branch records indicate that this is the same day that the Notice of Dispute Resolution Proceeding Package for the Expedited Hearing became available to them by the Residential Tenancy Branch (the Branch). Although Y.B. stated that another agent for the Landlord noticed that the Notice of Dispute Resolution Proceeding Package for the Expedited Hearing was removed from the Tenant's door within the hour, the Agents did not call

that witness during the hearing and no documentary evidence was submitted by that witness for my review and consideration.

As a result of the above, and in the absence of any evidence to the contrary, I find that the Tenant was deemed served with the above noted documents for the expedited hearing in accordance with the Act and the Rules of Procedure on February 12, 2021, pursuant to section 90(c) of the Act.

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

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 tenancy agreement in the documentary evidence before me states that the periodic tenancy (month to month) commenced on April 1, 2011, in a rent-geared-to-income building. The tenancy agreement states that at the time the tenancy started, market rent for the unit was \$591.00, and that a security deposit in the amount of \$295.50 was therefore paid by the Tenant. At the hearing, the Agents confirmed that the full amount of the security deposit is still held in trust by the Landlord. The tenancy agreement states that subsidized rent in the amount of \$320.00 was due on the first day of each

month at the start of the tenancy, plus \$10.00 for utilities and \$30.00 for cable. At the hearing the Agents stated that as the operating agreement for subsidized housing ended in June of 2018, rent is currently set at \$640.00 per month.

The Agents testified that there have been issues with the state of the Tenant's rental unit off and on since 2019, due to the Tenant's inability to care for themselves or clean the rental unit, and that two previous One Month Notices to End Tenancy For Cause were served as a result in 2019 and 2020. The Agent stated that both previous notices were cancelled or withdrawn as the Tenant was able to obtain help caring for themselves either from a family member or VIHA, which resulted in resolution of the issues. However, the Agents stated that the Tenant no longer has family support and VIHA workers are no longer able to enter the rental unit and thereby support the Tenant, due to biohazards present in the rental unit due to the Tenant's inability to properly care for themselves or clean the rental unit.

The Agents stated that a routine inspection of the rental unit was completed on January 26, 2021, where the state of the rental unit was found to be unacceptable, as there was feces throughout the bathroom and rental unit, the rental unit was significantly and unacceptably cluttered with garbage and recyclables, and food was being improperly stored. Pictures of the rental unit taken during the inspection and a condition inspection report were submitted for my review and consideration.

The Agents stated that the stench from the Tenant's rental unit is so significant, that it can be smelled when you exit the elevator for the floor, even when masks are worn, and throughout the hallway for the floor on which the rental unit is located. The Agents stated that due to pressurization of the hallway, the stench is not entering other units, but significantly and unreasonably disturbs other occupants and their guests in the hallway, as well as employees of the Landlord who work in the hallway to clean or attend to other business.

Further to this, the Agents stated that the Tenant is tracking fecal matter and other human waste into the hallways, elevator, and lobby of the building as they are unable to clean themselves, the rental unit, or the wheels of their wheelchair, resulting in serious health and safety issues for other occupants and staff of the building, who share these common areas with the Tenant.

Finally, the Agents stated that the Tenant is putting the Landlord's property at significant risk because employees of the Landlord are no longer permitted to enter the rental unit as a result of the health and safety risks associated with the biohazards present in the

rental unit, meaning that they cannot enter to inspect the rental unit or to repair damage, such as plumbing leaks, should they occur.

Given the significant disturbance caused by the stench of the Tenant's rental unit throughout the floor on which it is located, the health and safety risks posed to staff, other occupants, and their guests, by the tracking of human waste by the Tenant throughout common areas of the building, and the significant risk posed to the Landlord's property by both the state of the rental unit, and the inability for the Landlord's staff to enter the rental unit for health and safety reasons, the Agents stated that it would be unreasonable and unfair to the Landlord and other occupants of the residential property to wait for a One Month Notice under section 47 to take effect.

Although the Agents stated that they are doing everything possible to ensure that the Tenant has somewhere to move to at the end of the tenancy where they will have the supports they need, they stated that some of these options are not available while there is an ongoing tenancy. As a result, and due to the significant and ongoing nature of health hazards and the disturbances caused to other occupants and staff by the Tenant and the state of the Tenant's rental unit, they sought an early end to the tenancy as soon as possible pursuant to section 56 of the Act. The Agents also sought authorization to withhold \$100.00 from the Tenant's security deposit for recovery of the filing fee.

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 compelling and 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 has put the Landlord's property at significant risk. I am also satisfied that, under the circumstances, 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 Landlord effective two days after service of this Order on the Tenant. The Landlord is 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 Landlord.

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.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: March 1, 2021

Residential Tenancy Branch