



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Superior Living Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

The teleconference hearing started at the scheduled time of 11:00 A.M. The landlord, property manager JK, maintenance supervisor MF and witnesses TS and AG attended the hearing.

The landlord affirmed both tenants live in the rental unit and were served with the application and the evidence (the materials) on March 17, 2021. Two identical packages were delivered to tenant GF, one addressed to tenant GF and the other to tenant ML. MF testified he served both packages to tenant GF on March 17, 2021.

Section 89(2) of the Act states:

An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

Based on the landlord and MF's testimony, I find the tenants were served the materials in accordance with section 89(2)(a) and (c) of the Act.

The tenants joined the hearing at 11:20 A.M., after I accepted service. I explained to the tenants the hearing stated at the scheduled time. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. All parties confirmed they are aware this hearing cannot be recorded.

Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of a tenancy and order of possession?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord stated the tenancy started on September 01, 2019. Monthly rent is \$1,200.00, due on the first day of the month. The landlord collected and holds a security deposit of \$300.00 and a pet damage deposit of \$300.00. The tenancy agreement was submitted into evidence.

The landlord testified the tenants had several domestic violence incidents during their tenancy and constantly disturbed other occupants of the rental building after 10:00 P.M. The domestic violence incidents became more common and the police attended the rental building several times this year.

The landlord affirmed on March 02, 2021 she received numerous complaints about a domestic violence incident in the tenants' rental unit. Tenant GF was arrested in the rental unit on March 03, 2021 at 00:15 A.M. The police returned to the rental building around 5:00 P.M, removed tenant ML from the rental unit and another occupant of the rental unit was arrested. The landlord submitted into evidence CCTV footage showing tenant GF and the other occupant arrested. This application was filed on March 10, 2021.

Witness TS testified the tenants were banging on the floor and there was a lot of noise during the night of March 02, 2021. Witness TS also stated the tenants are repeatedly

making loud noises late at night and tenant ML knocked on other tenants' doors. Witness TS feels her safety is seriously jeopardized by the tenants' actions and she lost the quiet enjoyment of her rental unit.

Tenant GF admitted she was arrested, but she is pleading not guilty. Tenant GF stated the landlord harassed them, inspected the rental unit without providing a written 24-hour notice, the rental's unit heat was turned off and the tenants no longer have overnight guests.

Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

(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.

Residential Tenancy Branch Policy Guideline 51 states:

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).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the undisputed landlord's convincing and detailed testimony, CCTV footage and witness TS' testimony, I find, on a balance of probabilities, pursuant to section 56(2)(a)(i) of the Act, the tenants repeated actions, especially the ones on March 02, 2021, unreasonably disturbed other occupants of the rental building. I further find that the police needed to attend the rental building twice on March 03, 2021 due to the tenants' domestic violence dispute. The tenants' response testimony was vague.

If the landlord issued a notice for cause under section 47 of the Act due to the March 02, 2021 incident the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenant and possibly the landlord would wait up to three months if the tenants disputed the notice. Due to the significant disturb caused by the tenants to other occupants of the rental building on March 02, 2021, I find that pursuant to section 56(2)(b), it would be unreasonable for the landlord to wait to end the tenancy.

I grant an order of possession effective two days after service on the tenant, pursuant to section 56(2)(a)(i) of the Act.

As the landlord is successful in this application, the landlord is entitled to recover the filing fee.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order**. 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.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: March 25, 2021

Residential Tenancy Branch