

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;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:18 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord and his counsel DS (the landlord) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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, his counsel and I were the only ones who had called into this teleconference.

The landlord stated the tenant informed him that he would move out on November 01, 2020 but he did not. The tenant or someone authorized by the tenant is occupying the rental unit.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on March 03, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision). A photograph of the stamped package mailed on March 03, 2021 was submitted into evidence.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on March 08, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of a tenancy and subsequent 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 party, 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 party; it is his obligation to present the evidence to substantiate the application.

The landlord stated the tenancy started on May 15, 2019. Monthly rent is \$1,850.00, due on the first day of the month. The landlord collected and holds a security deposit of \$925.00. The tenancy agreement was submitted into evidence.

The landlord affirmed the tenant or the rental unit's occupant put the landlord's property at significant risk by flooding the unit and damaging other units in the rental building in late January 2021. On January 31, 2021 tenant KC emailed the building manager:

I live on [anonymized] - the unit above [tenant's unit] **bathroom seems to be leaking and there was a ton of water in my bathroom on the floor and it seems to have damaged my roof as well.**

I went upstairs and no one answered although I can hear them walking around as they are always quite loud. They seem to have hardwood in the bedrooms as well as I constantly hear noises and loud banging almost every night till 3-4AM.

Attached a picture and video of the current damage. I called our building manager as well but he doesn't seem to be here.

(emphasis added)

The contractor hired by the rental building to repair the flooding damage wrote on February 01, 2021:

We attended the above last night as reported by [anonymized] after hours. **The source would appear to be from Unit [tenant's unit]; however, we were not provided access by the residents in this Unit to inspect for damages.**

(emphasis added)

The landlord learned about the flooding on February 05, 2021 and tried to enter the rental unit in the first week of February. The tenant did not open the rental unit door and the landlord was not able to conduct the rental unit inspection.

The landlord said the tenant's utilities were disconnected. A notice of final electricity disconnection dated January 06, 2021 was submitted into evidence. On February 09, 2021 tenant RR informed the building manager that the tenant "has taken the door knob off and has an extension cord to the electrical outlet in the stairwell". A photograph showing an extension cord from the stairwell to the rental unit was submitted into evidence.

On February 17, 2021 the building manager emailed the landlord's counsel: "Any news on [tenant] I am getting emails daily from residents of the building." This application was filed on February 19, 2021. The landlord explained he did not apply earlier because he needed to gather the evidence to submit this application.

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, the emails dated January 31, February 01, 09 and 17, 2021, the notice of final disconnection of utilities and the photograph, I find, on a balance of probabilities, pursuant to section 56(2)(a)(iii) of the Act, the tenant or the rental unit's occupants put the landlord's property at significant risk by flooding the rental unit, damaging other units in the rental building and using an extension cord from the stairwell to the rental unit. I find the disconnection of electricity is also a significant risk, as electricity may be needed for fire alarms.

If the landlord issued a notice for cause under section 47 of the Act, the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenant. I find that pursuant to section 56(2)(b), it would be unreasonable for the landlord to wait to end the tenancy by issuing a notice for cause.

I grant an order of possession effective two days after service on the tenant, pursuant to section 56(2)(a)(iii) 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 tenant 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 24, 2021

Residential Tenancy Branch