



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 4, 2021, wherein the Landlord sought an early end to tenancy and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on April 19, 2021. Only the Landlord and his legal counsel, R.G., called into the hearing. The Landlord gave affirmed testimony and his counsel presented the Landlord's evidence and made submissions on his behalf.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:19 a.m. Additionally, 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 legal counsel, and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that they attempted to personally serve the Tenant with the Notice of Hearing and the Application on April 8, 2021. The Tenant refused to come to the door at which time the Landlord posted the hearing documents to the rental unit door.

Pursuant to section 90 of the *Residential Tenancy Act*, documents served this way are deemed served three days later; accordingly, I find the Tenant was duly served as of April 11, 2021 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an early end to tenancy?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began October 15, 2019.

The circumstances giving rise to the Landlord's request are as follows. The Landlord stated that approximately 8-9 months ago the Tenant started getting very intoxicated and yelling and banging on the ceiling. The Landlord and his family live upstairs and are concerned and frightened by his behaviour.

In late February the Tenant was intoxicated, yelling and screaming and banging on the ceiling and the Landlord called the police. The Tenant was taken away by the police although the Landlord does not know if any charges were laid.

The Landlord then served a 1 Month Notice to End Tenancy for Cause on the Tenant. The effective date of the Notice was the end of March 2021. The Tenant did not apply to dispute the Notice and did not move out. When the Landlord tried to talk to him about this the Tenant threatened to burn the house down. The Landlord was very frightened by the Tenant's threat reported the incident to the police. The police attended by the Tenant refused to open the door.

Analysis

A tenancy may be ended early pursuant to section 56 of the *Act*, which provides as follows:

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.

[emphasis added in bold italics]

This is a two part test and the landlord must prove both parts.

In this case, the Landlord testified that the Tenant has become increasingly violent while excessively drinking. The Landlord stated that the Tenant yells and screams at the Landlord and his family and bangs on the ceiling of his rental unit. This behaviour has resulted in the police attending on two separate occasions. The first time the police attended they took him into custody, the second time the Tenant refused to come to the door.

The Landlord issued a 1 Month Notice to End Tenancy for Cause, and the Tenant failed to dispute the Notice. The Landlord assumed the Tenant was intending to move out and when he tried to discuss this with the Tenant the Tenant threatened to burn the house down. The Landlord and his family live upstairs and are understandably very concerned about the Tenant's behaviour and this threat.

The Tenant was served with Notice of this hearing yet failed to attend. As such, he did not dispute the Landlord's claim nor did he dispute the Landlord's testimony and evidence.

On balance I find the Tenant has significantly interfered with and unreasonably disturbed the Landlord and his family, as well as seriously jeopardizing their health and safety. I accept the Landlord's testimony that the Tenant threatened to burn down the Landlord's home, such that the Tenant has put the Landlord's property at significant risk. I find the Landlord has cause to end this tenancy.

While the Landlord issued a 1 Month Notice to End Tenancy for Cause, and the effective date of that notice has passed, the Tenant did not vacate the rental unit. For the 1 Month Notice to take effect the Landlord would need to apply for an Order of Possession based on the Notice and attend a further hearing before the Residential Tenancy Branch. I accept the Landlord's testimony that he applied for an early end to tenancy pursuant to section 56 because of the urgency created by the Tenant's threat to burn down the rental property. Given the severity of this threat, I find it would be unreasonable for the Landlord and his family to wait for a hearing on the merits of the 1 Month Notice.

I therefore grant the Landlord's request. The Landlord is granted an Order of Possession which shall be effective immediately upon service on the Tenant. Should

the Tenant fail to vacate the rental unit, the Landlord may file and enforce the Order of Possession in the B.C. Supreme Court.

The Landlord has been successful in this Application; as such, and pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain \$100.00 of the Tenant's security deposit as recovery of the filing fee. The balance of the Tenant's security and pet damage deposit (if applicable) shall be held by the Landlord and dealt with in accordance with section 38 of the *Act*.

Conclusion

The Landlord is entitled to an early end to tenancy. The Landlord is granted an Order of Possession and may retain \$100.00 from the Tenant's security deposit as recovery of 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: April 20, 2021

Residential Tenancy Branch