



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Edka Properties Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An early end of the tenancy and Order of Possession pursuant to section 56; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence in person to the tenant on April 28, 2021. The landlord submitted into evidence a Proof of Service form signed by the tenant confirming receipt of the hearing package. Based on the evidence I find the tenant duly served with the landlord's materials on April 28, 2021 in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end of the tenancy and Order of Possession?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence of the following facts. This periodic tenancy began in 2005. The landlord assumed the tenancy when they purchased the rental

building in 2019. The rental unit is a suite in a multi-unit building with 34 suites. The current monthly rent is \$943.00 payable on the first of each month. A security deposit of \$375.00 is held by the landlord.

The rental unit is in a severely unsanitary state requiring professional cleaning and disinfecting. The landlord issued warning letters on April 8, 2021 and April 10, 2021 noting the need for immediate intervention by bio-cleaning and plumbing professionals. The tenant has failed to arrange for proper cleaning of the suite. The landlord submitted into evidence numerous photographs of the suite as well as correspondence with third-party biohazard cleaning companies assessing the state of the rental suite. The photographs show areas of the rental suite covered with mould, human excrement and water.

The landlord submits that the extreme condition of the rental suite poses a serious health risk to the tenant and the other occupants of the rental building. The landlord notes that the suite below the rental unit has experienced some leaking and ingress of water from the rental unit. The landlord testified that they have engaged the tenant in discussions about what is required to restore the rental unit but the tenant has failed to take appropriate actions. The landlord submits that the tenant's continued treatment of the rental unit caused and continues to cause extraordinary damage requiring intervention by, not simply cleaning, but bio-hazard cleaning professionals.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- 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 interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

it would be unreasonable, or unfair to the landlord, the tenant 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.

Based on the evidence of the landlord, including their undisputed testimony and documentary materials, I find that the landlord has provided sufficient evidence to show that the tenant poses a serious jeopardy to the health and safety of other occupants and the landlord and that they place the landlord's property at significant risk.

I accept the evidence of the landlord that the tenant has caused their rental unit to fall into a severely unsanitary state. I am satisfied with the photographs and correspondence from third party professionals that this is not simply a rental unit that is untidy but one where biological waste matter coats the floors and walls of the suite such that it poses a severe risk to health. I find that biological waste including mould, human feces and pooled water left in a rental unit is an inherent source of risk to health of occupants of a building. I further find that the tenant's failure to address these issues in a timely and reasonable basis causes significant damage to the rental property.

I am satisfied that the nature of the health risks posed by the tenant's failure to maintain their rental unit is causing further damage to other units through ingress of water and airborne contaminants. I find that it would be unreasonable and unfair to the other occupants of the rental property and the landlord to allow this tenancy to continue until a notice to end pursuant to section 47 takes effect.

Accordingly, I issue an Order of Possession to the landlord pursuant to section 56 of the *Act*.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$375.00 to \$275.00.

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: May 20, 2021

Residential Tenancy Branch