



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlord filed an Application for Dispute Resolution on April 10, 2021 seeking an order to end the tenancy on the basis that the tenants pose an immediate and severe risk to the property, other occupants or the landlord. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 11, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The agent for the landlord (hereinafter the “landlord”) attended the hearing; the tenants did not.

The landlord stated that they delivered notice of this dispute resolution to the each of the tenants, separately, through registered mail to the rental unit address where the tenants then resided. They provided a proof of service document, and an enclosed receipt shows this was on the day after the Residential Tenancy Branch generated the Notice of Hearing.

From what the landlord presents here on notifying the tenants of this hearing, I am satisfied they served the tenants the Notice of Hearing in a method prescribed by the *Act*.

The tenants did not attend the hearing and did not provide any documentary evidence in advance.

Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by s. 56 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all oral testimony and documentary evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of the tenancy for cause.

The landlord confirmed there was a tenancy agreement in place. They provided a copy of it for this hearing. The tenants moved into the unit in January 2020. The agent for the landlord here took over from a previous agent in summer 2020, and then had the tenants sign a tenancy agreement. The agreement appears in the evidence with the signatures of the landlord's agent and both tenants, dated September 17, 2020. The rent amount was \$1,300.00 per month.

The landlord served a number of notices to end tenancy, for late payment or rent. Their "final notice" to the tenants here was on April 30, 2021.

Issues with the tenants began in June 2020 with miscellaneous complaints. An initial inspection by the landlord's agent here revealed an extra pet in the unit, and the tenants then proving difficult with a delay in signing a new tenancy agreement.

Notices from the strata to the landlord continued at the start of 2021 – these incidents involved police, with a record of weapons being removed from the rental unit. The landlord's agent inspected the unit on April 9, 2021, and this revealed "numerous stains" and garbage throughout the unit, a "garage filled with a number of bicycles" and "weapons in bedrooms". By this time, one of the tenants in the agreement had moved out, and "two unknown tenants not on the lease are staying in the unit."

In conjunction with this, the police pursued charges stemming from an investigation. This resulted in charges laid, and on April 12, 2021 a judge issued a Release Order.

One of the conditions on this document is that the tenant so charged shall not be within 50 metres of the property. On May 9 and May 10, an officer attended the unit with this tenant to remove personal items and advised the landlord's agent once this was completed.

The observations they made in their inspection visits, as well as documents from the strata outlining complaints are included in the landlord's documentary evidence.

Analysis

The *Act* s. 56 of the *Act* provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 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 tenancy were given under section 47 [*landlord' notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.

Following this, s. 56(2) sets out two criteria. First, the landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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' property at significant risk;
 - (iv) engaged in an 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
...

I have considered the evidence of the landlord concerning the incidents of police investigation, their own inspections, and the provided evidence of the state of the unit.

I find there is sufficient evidence to show the tenant is the source of legitimate concern over significant risk to the property. This is specified by s. 56(2)(a)(iii) – this is shown with the photos depicting damage throughout the rental unit.

Additionally, there is ample evidence to show the tenant has engaged in illegal activity affecting the security and safety of others. This is set out in s. 56(2)(a)(iv). The chief evidence here is the weapons charges that are shown in the evidence.

From the evidence I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the landlord to wait for a set-period Notice to End Tenancy to take effect. I find what the landlord presents merits an expedited end to the tenancy. I so grant an Order of Possession in line with this rationale.

As the landlord were successful in this application, I find they are is entitled to recover the \$100.00 filing fee paid for this application. I grant the landlord a monetary order for this amount.

Conclusion

For the reasons above, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 s. 72 of the *Act*, I grant the landlord a Monetary Order for the recovery of the filing fee paid for this application. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: May 11, 2021

Residential Tenancy Branch