



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlords 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.

I left the teleconference connection open until 11:32 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. Landlords AA and ZA (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 landlords and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlords affirmed they understand it is prohibited to record this hearing.

The landlord testified she served the application and the evidence (the materials) by attaching them on the tenant's door on May 05, 2021 at 9:15 P.M. I find the tenant was properly served the materials in accordance with section 89(2)(d) of the Act.

Section 90(c) 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 attaching on the door on the 3rd day after it is attached. The tenant is deemed to have received the materials on May 08, 2021.

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

Issues to be Decided

Are the landlords 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 the landlords' obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on December 15, 2020. Monthly rent is \$1,400.00, due on the first day of the month. At the outset of the tenancy the landlords collected a security deposit of \$700.00 and hold it in trust. The tenancy agreement was submitted into evidence. It states: "No smoking inside or surrounding area of the premises".

The rental unit is in the basement of the landlords' house. On March 31, 2021 the landlord first noticed smoke pollution in her house by the cigarette smoke originated from the rental unit. The landlord has noticed smoke pollution every day and her health has been seriously jeopardizing by the smoke. The landlord submitted into evidence a doctor's appointment notice issued on April 13, 2021 indicating she has an appointment with a respirologist doctor.

The landlord stated on April 16, 2021 her health condition deteriorated because of the constant smoke pollution, she needed medical care and landlord AA asked the tenant to stop smoking in the rental unit. Landlord AA affirmed the tenant informed him that he does not care about the smoke situation and threatened him "you don't know what I can do".

On April 21, 2021 the landlord sent a letter to the tenant:

I have given several verbal notices about NOT smoking in the suite and around the property. You have a signed tenancy agreement which clearly states NO smoking of any kind. As you were told at the beginning of your tenancy that I have a severe [redacted] from any kind of smoking. You continue to smoke in the house and on Friday April 16, 2021 you became very aggressive towards my husband when he told you that I am suffering due to smoke inhalation and I had to call the paramedics at home around 4.30 pm, I

was attended by first responders and paramedic. My health is deteriorating every day.

The landlord submitted a letter from the tenant's neighbour:

[Tenant] has been extremely disrespectful and obnoxiously loud. He plays loud music late at night. I work 12 hour shifts some days and I need to be able to relax when I get home. **My landlords have talked to him about this multiple times, but nothing has changed. He has also been smoking inside his suite, causing health problems for one of my landlords and causing myself discomfort. I can smell it from inside my suite and sometimes it's all I can smell. I have had to go for walks in the middle of the night to get away from the smell.** In my rental agreement it states that I cannot smoke inside or around the premises. I would assume that his states the same thing.

The cops have knocked on my door twice looking for him. I have no idea why but the second time they took him away in handcuffs. After witnessing that, I started to question my safety. I should not have to worry about my safety in my own home. **This man is causing serious stress to my mental health, which has been a struggle in my life for a long time. I need to be able to relax in my own home. Feel safe in my own home. If nothing changes, I will be forced to move out of a home that I have quickly grown to love.** This would be devastating for me as my landlords have been more than amazing to me since the first day that I moved in.

This application was filed on April 23, 2021. The landlord explained she did not apply earlier because she was gathering 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 letter dated April 21, 2021, the doctor's appointment notice and the tenant's neighbour letter, I find, on a balance of probabilities, the smoke pollution originated from the tenant's rental unit is seriously deteriorating and jeopardizing the health of the landlord and another tenant.

The landlord warned the tenant to stop smoking and he continued to smoke in the rental unit. Pursuant to section 56(2)(a)(ii) of the Act, I find the tenant's behaviour has seriously jeopardized the health of the landlord and another tenant.

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 because of the constant smoke pollution and the landlord's deteriorating health condition.

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

As the landlords were successful in this application, the landlords are 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 landlords are 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: May 21, 2021

Residential Tenancy Branch