



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlords seek an order to end the tenancy pursuant to section 56 of the *Residential Tenancy Act* (“Act”). In addition, they seek recovery of the application filing fee pursuant to section 72 of the Act.

One of the landlords, and the landlords’ daughter – who was affirmed and who spoke on behalf of the landlords – attended the hearing on June 4, 2021 at 9:30 AM. The tenant did not attend the hearing, which ended at 9:47 AM. I am satisfied based on the oral and documentary evidence provided that the tenant was served with the Notice of Dispute Resolution Proceeding in compliance with the Act and the *Rules of Procedure*. In addition, it should be noted that the Residential Tenancy Branch (the “Branch”) file notes indicate that the tenant called the Branch’s information line at 9:22 AM on the day of the hearing and was “informed of hearing info” by an information officer.

Issues

1. Are the landlords entitled to end the tenancy under section 56 of the Act?
2. Are the landlords entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on June 15, 2017, monthly rent is \$850.00, and the tenant paid a security deposit of \$450.00. A copy of a written tenancy agreement was in evidence.

The landlords filed this application for an order under section 56 of the Act because, as described in their application:

Tenant screaming, yelling, inappropriate sex noises, threatening inhabitants of the house (including the landlord and the young children of the tenants). She brings in violent homeless people who are inappropriately using property. Her smoking/drug use has caused health issues among the tenants. Police has been called multiple times to the property for noise complaint and disturbance. Tenant refuses to leave after 1 month notice given in Feb 2021.

The landlords' daughter confirmed this to be an accurate description of the issues caused by the tenant and acknowledged that the other tenants of the property feel scared. A letter authored by the upstairs tenant (the one who has two small children) was submitted into evidence. An excerpt from that letter, which is signed and dated May 11, 2021, gives some flavour as to the situation in this property:

[. . .] my family and I can hear a lot of yelling coming into our unit. and it keeps like that till 03:00 AM. I believe this type of disturbance violates our community rules. Additionally, the behavior is in violation of the city's noise ordinance code of conduct.

Also it affects our daily life and my daughter 12 years old babysitting my son 9 years old very terrifying from this voices and couldn't stay in the ground floor at all to even eat snacks with that noise as they scared each time when they hear that very loud voices and yelling

Also, we got a very strong smoking cigarettes and marijuana through the ventilation ,your daughter noticed that smoke from inside the unit when she was talking to her or giving her something! and we tried hardly to stop that through closing the heat even during the winter time I am very concerned about my family health. I have asthma and allergic rhinitis I have noticed I am coughing more and needs to use my inhaler at night, something I didn't previously need to do.

Because the smoke infiltration is significant in my daughter's bedroom, she now sleeps in my room. We keep her bedroom door closed all the time, so unfortunately we don't have use of this room anymore. We also are forced to keep our windows open day and night to try to air out the unit, we won't be able to keep the windows open

There is in the landlords' evidence additional information concerning police attendance at the rental unit in response to various problems, spanning a period from July 13, 2020 to January 3, 2021.

Analysis

Section 56 (1) of the Act permits a landlord to 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, and (b) granting the landlord an order of possession in respect of the rental unit. In order for me to grant an order under section 56 (1), I must be satisfied that

- (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.

I am more than persuaded that the tenant has unreasonably disturbed another occupant of the residential property. The other occupant and his two children quite rightly fear for their safety. In addition, the tenant's blatant disregard for the no-smoking rule has adversely affected the other occupants' health and physical well-being.

While it should be noted that the landlords issued a One Month Notice to End Tenancy for Cause in late February 2021, the tenant was hospitalized for a period of time, which delayed the service of this notice. Unfortunately, due to the tenant's ongoing behavior, it would be unreasonable and unfair to the other occupants to have to wait. In short, the landlords and the other occupants have suffered more than enough, and it is my finding that the tenancy must end.

In summary, then, after taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their application for an order to end the tenancy under section 56 of the Act. Therefore, pursuant to section 56 of the Act, I (1) order that the tenancy is ended effective immediately, and (2) grant the landlords an order of possession of the rental unit. The order of possession, which is issued in conjunction with this decision to the landlords, must be served on the tenant (see [section 88](#) of the Act for service methods).

As the landlords were successful in their application, pursuant to section 72 of the Act, I award them \$100.00 to pay for the cost of the filing fee. As the tenancy is now ended, I authorize the landlords to retain \$100.00 of the tenant's security deposit in full satisfaction of this award, pursuant to section 38(4)(b) of the Act.

Conclusion

I HEREBY

1. order that the tenancy is ended, effective immediately, pursuant to section 56(1)(a) of the Act;
2. grant the landlords an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia; and,
3. authorize the landlords to retain \$100.00 of the tenant's security deposit, pursuant to sections 38(4)(b) and 72(2)(b) of the Act.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 4, 2021

Residential Tenancy Branch