



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 termination of 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, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was 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 landlord and I were the only ones who had called into this teleconference.

The landlord testified that the landlord's application for dispute resolution as posted on the tenant's door on May 20, 2021. A witnessed proof of service document stating same was entered into evidence. I find that the tenant was served in accordance with section 89(2)(d) of the *Act*.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution hearing.

The landlord confirmed their email address for service of this decision and order.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. The tenant moved into the subject rental property approximately six months before the move in date of the current tenancy agreement. The move in date of the current tenancy agreement is March 1, 2017. This tenancy agreement is currently ongoing. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$525.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is a basement suite in a house and there are two other rental suites on the two floors above the basement suite.

The landlord testified that on April 2, 2021 the tenant set a fire in the subject rental property which caused significant damage. The photographs of the damage entered into evidence show that the fire climbed up the walls and hit the ceiling before it was extinguished. The landlord testified that the fire department attended at the property and put the fire out. The landlord testified that he was informed about the fire from the other tenants of the subject rental house and that when he tried to contact the tenant, the tenant would not respond.

The landlord entered into evidence a fire incident report from the fire department which states that the fire was accidental.

The landlord testified that the tenant has started piling heaps of garbage on the lawn. Photographs of large towers of materials were entered into evidence. The landlord testified that the tenant is attempting to block access to the subject rental property.

The landlord testified that on April 7, 2021 the tenant caused another fire or near fire at the subject rental property. The landlord testified that one of the other tenants informed him that heavy smoke poured out of the subject rental property. The landlord testified that he called the tenant on April 7, 2021 and the tenant informed him that he had an accident with the oven. A text message from the tenant dated April 7, 2021 was entered into evidence and states:

I was planning to bake bread today. I preheat the oven and went to get my laundry and came back down and smoke was pouring out...I won't use the oven again. I saw your eviction notice two days ago. I'll be gone by the end of the month, I'll get my cars out of the driveway and clean the yard and make get everything out of the unit as soon as I can.

[reproduced as written]

The landlord testified that the tenant did not move out. The landlord testified that he is extremely concerned for the lives of the tenants who live in the units above the tenant. The landlord testified that he is worried that the tenant will start another fire.

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. 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

Based on the landlord's undisputed testimony, the photographs entered into evidence and the fire incident report, I find that the tenant caused a fire to start in the subject rental building which put the landlord's property at significant risk and seriously jeopardized the health or safety or a lawful right or interests of the landlord and other tenants of the rental building.

Based on the landlord's undisputed testimony and the April 7, 2021 text message from the tenant entered into evidence, I find that the tenant caused heavy smoke to pour from the subject rental property because he did not take reasonable care when leaving the property while the oven was turned on. I find that this could have started another fire.

I accept the landlord's undisputed testimony that the tenant's piles of garbage and materials are reducing access to the subject rental property.

I find that it would be unreasonable and unfair to the landlords and other tenants of the subject rental building to wait for a notice to end tenancy under section 47 of the *Act* because the tenant has shown negligence in his care of materials that can cause fires and may cause other fires while the landlord and other tenants wait for the notice period under section 47 of the *Act*.

I find that the piles of garbage and materials stacked by the tenant increase the danger faced by the other tenants as the obstruction to the subject rental property could interfere with the fire department's access to the subject rental property which in turn

could diminish the fire department's ability to put out the fire, thus jeopardizing the health and safety of the other tenants in the building. I find that it would be unreasonable for the other tenants to live with this risk for longer than absolutely necessary.

Pursuant to my above findings, the landlord is entitled to a two-day Order of Possession.

As the landlord was successful in this application for dispute resolution, the landlord is entitled to recover the \$100.00 filing fee from the tenant. Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55 and 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

The landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: June 04, 2021

Residential Tenancy Branch