



Dispute Resolution Services

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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 landlord 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 10:07 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent PL (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. Witness WG also attended. 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, his witness and I were the only ones who had called into this teleconference.

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

The landlord affirmed he served the application and the evidence (the materials) by leaving a copy of the materials at the tenant's residence with an adult who apparently resides with the tenant named KC on May 19, 2021 at 12:40 P.M. Witness WG stated he observed the landlord delivering a copy of the materials to KC. Based on the convincing testimony offered by the landlord and witness WG, I find the tenant was served the materials in accordance with section 89(2)(c) of the Act.

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

Issues to be Decided

Is the landlord 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 his obligation to present the evidence to substantiate the application.

The landlord testified the tenant is currently occupying the rental unit. Monthly rent is \$559.00, due on the first day of the month. This application was submitted on May 14, 2021.

The landlord said on April 07, 2021 he inspected the rental unit and found it in a significant state of disrepair. The tenant damaged the doors, the walls, and the bathroom. The landlord submitted 24 photographs into evidence showing graffiti on the walls and two broken doors.

The landlord stated the tenant has been authorizing drug users to enter the rental unit to purchase and consume drugs. On April 22, 2021 the police arrested an occupant of the rental unit.

On April 23, 2021 the landlord emailed the tenant: "You continue to allow unauthorized occupants to remain in the rental unit in your absence. I visited the building at the request of the police to apprehend an underage male from your rental unit on April 22, 2021." On May 05, 2021 the landlord emailed the tenant again: "We have observed that you continue to occupy the premises and allowing third parties to occupy the premises without our consent."

Witness WG rents a unit below the tenant's unit. On May 10, 2021 WG observed an opened bag of garbage next to the garbage bin with envelopes addressed to the tenant and ten used syringes.

The landlord affirmed on May 14, 2021 the police returned to the rental unit because the police believed a person of interest was occupying the rental unit.

Both the landlord and witness WG fear for their safety, as drug users are constantly entering the rental unit to purchase and consume drugs.

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 convincing and detailed testimony offered by the landlord and witness WG, the emails dated April 23 and May 05, 2021 and the photographs, I find, on a balance of probabilities, pursuant to section 56(2)(a)(ii) of the Act, the tenant has seriously jeopardized the safety of the landlord and other occupants of the rental building by authorizing drug users to enter the rental unit. The photographs show extraordinary damage to the rental unit. I find that the ten used syringes in the tenant's opened bags of garbage next to the garbage bin are a significant threat to the health and safety of the landlord and other occupants of the rental building.

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, as the police attended the rental unit twice and arrested one occupant of the rental unit in the 22 days before this application was filed.

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

As the landlord is successful in this application, the landlord is entitled to recover the filing fee.

Conclusion

Pursuant to section 56(2) of the Act, 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(1) of the Act, I grant a monetary order to the landlord in the amount of \$100.00. The landlord is provided with this order in the above terms and the tenant must be served with this order. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 09, 2021

Residential Tenancy Branch