



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City of Vancouver
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with a landlord's application for an order to end the tenancy early and obtain an Order of Possession made under section 56 of the Act.

The landlord's agent appeared for the hearing and was affirmed. There was no appearance on part of the tenant despite leaving the teleconference call open approximately 30 minutes.

Since the tenant did not appear, I explored service of the hearing materials upon the tenant. The landlord's agent testified that the proceeding package and evidence was sent to the tenant via registered mail on June 17, 2021 and the landlord also placed a second copy of the package directly in the tenant's mailbox at the residential property on June 17, 2021. The landlord provided a copy of the registered mail receipt, including tracking number as proof of service. The landlord's agent testified that he personally witnessed the tenant access his mailbox on June 18, 2021 and the landlord's agent informed the tenant orally that he was proceeding with the eviction hearing. The landlord's agent testified that he also saw the tenant at the property the day before this hearing.

I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord's agent without the tenant present.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord is entitled to an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy started on March 1, 2019 on a month to month basis. The tenancy agreement provides that the landlord collected a security deposit of \$187.50 and the tenant is required to pay subsidized rent of \$375.00 on the first day of every month.

On March 1, 2021 the parties executed a Mutual Agreement to End a Tenancy with an effective date of March 2, 2021. The tenant also executed a Property Release document to permit the landlord to remove the tenant's possessions from the rental unit.

The landlord's agent testified that the rental unit was significantly hoarded with the tenant's possessions and the tenant wanted to retain some of his possession and move them out of the rental unit so the landlord continued to permit the tenant to access the residential property and the rental unit and the tenant retained keys for the property. The landlord's staff members observed the tenant in the rental unit approximately once a week after March 2, 2021.

On May 29, 2021 a fire broke out in the rental unit. The tenant had apparently tried cooking in the rental unit and a fire resulted. The tenant turned on the shower in an attempt to control the fire and the fire suppression sprinklers came on. The fire department was called but the fire fighters could not enter the rental unit due to the hoarded possessions and the concern over the dirty uncapped needles that were visible near the entry of the rental unit. The landlord's staff entered the rental unit to turn off the shower; however, there was a significant amount of water damage to the rental unit and seven other living units.

The landlord proceeded to have the tenant's possessions removed and restoration work has commenced on the affected units but it is on-going.

The landlord stated the tenant stays with other people but the landlord is concerned the tenant will continue to access the rental unit and residential property as he has refused to return the keys. The landlord is also concerned about the potential for the tenant to cause damage to the rental unit again as the tenant is a heavy drug user.

The landlord explained that although a mutual Agreement to End a Tenancy had been executed, the landlord wanted to ensure any and all rights the tenant may have were protected and in the event the Mutual Agreement was not sufficient to obtain an Order of Possession, the landlord proceed to make this Application for Dispute Resolution.

The landlord provided evidence that included a copy of the tenancy agreement; the Mutual Agreement to End a Tenancy; the Property Release form; the fire incident report; photographs of the rental unit including that of hoarded possessions, uncapped needles, and blood on the walls.

Analysis

Under section 44 of the Act, a tenancy may be ended by way of a written agreement between the parties and it would appear there was such an agreement between the parties to bring the tenancy to an end on March 2, 2021. However, considering the landlord permitted the tenant continued access and use of the rental unit after that date, to be abundantly fair to the tenant, the landlord has sought an order that the tenancy be ended due to the circumstances that occurred on May 29, 2021. Accordingly, I proceed to consider whether the landlord has sufficient basis to end the tenancy due to the circumstances of May 29, 2021, under section 56 of the Act.

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

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

[My emphasis underlined]

Section 47 of the Act provides a mechanism for landlords to bring a tenancy to an end where the tenant has given the landlord cause to end the tenancy. A notice given under section 47 affords the tenant at least one full move to vacate the rental unit. Section 56 also requires that the tenant has given the landlord cause to end the tenancy; however, the seriousness of the alleged offence permits the landlord to have the tenancy ended with less than a month's notice. Accordingly, section 56 is intended to apply in the more urgent and severe circumstances.

In this case, it is unopposed that the tenant had hoarded a significant amount of possessions in the rental unit and the rental unit was littered with used hypodermic needles and there was blood on the walls. It is also unopposed that the tenant's actions

resulted in a fire in the rental unit on May 29, 2021 and the hoarding and used needles prevented the fire fighters from entering the rental unit to extinguish the fire in a timely manner, which resulted in a great amount of water damage from the fire suppression system and the shower that the tenant had turned on. Given these circumstances seven living units were affected by water damage.

In this situation I find the tenant's actions have unreasonably disturbed or significantly interfered with the other occupants of the residential property and caused significant damage to the landlord's property. As such, I find the tenant has given the landlord cause to end the tenancy.

Having been satisfied the tenant has given the landlord cause to end the tenancy, I consider whether the situation warrants ending the tenancy without the notice that would be given by way of a 1 Month Notice issued under section 47 of the Act.

The landlord asserted the tenant continues to access the property despite the removal of his possessions from the rental unit and the tenant continues to be a heavy drug user. As such, I find this unopposed testimony satisfies me that the potential for the tenant to cause damage to the property and the potential to disturb or harm other tenants due to his actions or negligence warrants an early end to the tenancy.

Considering the unit is vacant at this time, I find it reasonable to issue an Order of Possession effective IMMEDIATELY upon serving the tenant with the Order of Possession that accompanies this decision.

Conclusion

The tenancy is ended immediately upon serving the tenant with the Order of Possession that accompanies this decision.

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: July 14, 2021

Residential Tenancy Branch