



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Select Real Estate Property Management
Division and [tenant name suppressed to protect privacy]

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;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:51 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 property manager JR (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.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

The landlord affirmed he attached the Notice of Dispute Resolution Proceeding dated June 24, 2021 and the evidence (the materials) to the tenant's rental unit front door on June 25, 2021 at 9:56 A.M. A witnessed proof of service (RTB form 9) was submitted into evidence.

Based on the landlord's testimony and the witnessed proof of service, I find the tenant was served the materials in accordance with section 89(2)(d) of the Act and Rule of Procedure 10.3. The tenant is deemed to have received the materials on June 28, 2021, per section 90(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 stated the tenancy started on December 01, 2018. Monthly rent is \$695.00, due on the first day of the month. The landlord collected and holds a security deposit of \$347.50. The tenancy agreement was submitted into evidence. This application was submitted on June 11, 2021.

The landlord testified on June 10, 2021 the tenant set fire to the rental unit. The landlord inspected the rental unit with the firefighters and noticed paper burned in the bathroom, where the fire started. The landlord inquired the tenant about the fire, but the tenant refused to explain why he set fire to the rental unit.

The landlord inspected the rental unit on June 10, 2021 and noticed four used syringes, two damaged doors and holes on the walls. The landlord submitted into evidence nine photographs taken on June 10, 2021 at 8:00 P.M. showing fire damage in the bathroom, used syringes, two damaged doors and holes on the walls.

The landlord said on June 19, 2021 the tenant vandalized the common areas of the rental building and damaged several mailboxes. On July 09, 2021 the tenant verbally threatened his neighbour.

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 the nine photographs submitted into evidence, 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 other occupants of the rental building by setting fire to the rental unit. The photographs show extraordinary damage to the rental unit. I find the tenant's behaviour is a significant threat to the 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 due to the significant threat to the safety of other occupants of the rental building caused by the tenant.

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

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 landlord is 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: July 12, 2021

Residential Tenancy Branch