



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlord filed an Application for Dispute Resolution on June 25, 2021 seeking an order to end the tenancy on the basis that the tenants pose an immediate and severe risk to the property, other occupants, or the landlord. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 22, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The agent for the landlord (hereinafter the “landlord”) attended the hearing; the tenant did not attend. The landlord stated they delivered notice of this dispute resolution the tenant in person on July 9, 2021. This included their prepared documentary evidence for this hearing. They provided a Proof of Service completed form to give the detail on this transaction. The tenant signed to indicate they received the notice of this hearing. From this evidence, I am satisfied the landlord served the tenant Notice of Hearing in a method prescribed by the *Act*.

The tenant did not attend the hearing and did not provide any documentary evidence in advance.

Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by s. 56 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the Act?

Background and Evidence

I have reviewed all oral testimony and documentary evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of the tenancy for cause.

The landlord confirmed there was a tenancy agreement in place. They provided a copy of it for this hearing. The tenant moved into the unit in February 2021. The agreement appears in the evidence with the signatures of the landlord's agent and that of the tenant, dated January 11, 2021. The rent amount was \$2,700 per month.

Issues with the tenant began in February 2021, "as soon as they moved in" as described by the landlord. The landlord stated there were 60 violations pending for approval from the property strata, which is an indication that disturbances and other complaints were ongoing since the beginning of the tenancy.

The landlord submitted copies of strata violation notices that impose penalties to the rental unit for infractions. These include access to the parking area in the building, damage to property, and mail package items for other units reported stolen. As the landlord described the variety of incidents, these are "not just because of noise." Key to all of these incidents and the ongoing complaints are the number of visitors to the unit. As the landlord described these are "20-30 visitors per night". The nature of the visitors and the business they seek or are party to in the rental unit is the subject of complaints to different police agencies. The landlord described the activity as "commercial business" operating from within the unit, specifying a certain nature of the business that is suspected criminal.

In their evidence the landlord provided records of the activity for the fob entry pass that is assigned to the tenant. This reveals a number of transactions on the evenings shown in the records, primarily elevator traffic and other means of entry into the building. The landlord pointed to the rental unit number throughout the records to show that it is without question that the frequent visitors are associated with this rental unit.

Other evidence from the landlord consists of image captures from videos that are related to a storage locker break in. This was where the visitor was allowed access to the building by the tenant, all associated with the access fob assigned to the tenant in the rental unit.

In the hearing, the landlord reiterated the complaints to the strata from other tenants. The strata worked closely with the landlord since April to resolve the situation. The landlord spoke to the tenant personally about the ongoing issues; however, the activity has continued unabated. Neighbours of the rental unit could attest to the situation and safety, particularly on issues where the police have become involved. The landlord described the issues from the strata and tenants; however, they provided no documentary evidence directly from the strata or neighbours that describe the situation and their concerns.

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

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

Following this, s. 56(2) sets out two criteria. First, the landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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 an 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
- ...

I have considered the evidence of the landlord concerning the incidents of police investigation, their own interactions with the strata on these matters, and the provided evidence of activity within the rental unit building.

I find there is sufficient evidence to show the tenant is the source of legitimate concern over significant risk to the property. This is specified by s. 56(2)(a)(iii). The evidence for this consists of the landlord's own testimony as well as direct communication from the strata to the landlord describing incidents. The landlord quoted monetary amounts for damage stemming from the tenant's visitors.

Additionally, I find there is ample evidence to show the tenant and the people they allow to enter the property has significantly interfered with or unreasonably disturbed another occupant or landlord of the residential property. Evidence for this is the fines imposed by strata due to matters made known to them by building residents. The records of fob access activity provided by the landlord also attests to this.

As well, although illegal activity is not directly presented by the landlord by way of definitive proven criminal charges, I infer from the testimony and evidence presented that it is more likely than not that the tenant, or their visitors, has engaged in illegal activity as set out in s. 56(2)(a)(iv).

From the evidence of the landlord, I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the landlord to wait for a set period Notice to End Tenancy to take effect. I find what the landlord presents merits an expedited end to the tenancy – I so grant an Order of Possession in line with this rationale.

As the landlord were successful in this application, I find they are entitled to recover the \$100.00 filing fee paid for this application. I grant the landlord a monetary order for this amount.

Conclusion

For the reasons above, I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

Pursuant to s. 72 of the *Act*, I grant the landlord a Monetary Order for the recovery of the filing fee paid for this application. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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 s. 9.1(1) of the *Act*.

Dated: July 23, 2021

Residential Tenancy Branch