



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and for an early end to the tenancy.

The Landlord stated that on July 09, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on June 25, 2021 were posted on the door of the rental unit by a process server. The Landlord was given the opportunity to submit proof of service of the aforementioned documents to the Residential Tenancy Branch at the time of the hearing.

The Landlord submitted a signed Proof of Service which declares that a third party posted documents on the door of the rental unit on July 09, 2021.

On the basis of the testimony of the Landlord and the Proof of Service submitted in evidence, I find that the aforementioned documents were served to the Tenant in accordance with sections 88 and 89(2) of the *Residential Tenancy Act (Act)*. I therefore accept the aforementioned evidence as evidence for these proceedings and the hearing proceeded in the absence of the Tenant.

On July 16, 2021 the Landlord submitted additional evidence to the Residential Tenancy Branch, which included a One Month Notice to End Tenancy for Cause and evidence that had been previously submitted to the Residential Tenancy Branch. The Landlord stated that the One Month Notice to End Tenancy for Cause was served to the Tenant on May 17, 2021 and, as such, was not re-served to the Tenant as evidence for these proceedings.

Residential Tenancy Branch Rules of Procedure requires an applicant to serve a respondent with all evidence the applicant wishes to rely upon as evidence at the proceedings. This evidence must be served, in part, to notify the respondent that the applicant intends to present the evidence at the hearing. A landlord must serve each document as evidence for the proceedings even if the document has been previously served to the tenant, as is commonly the case with a notice to end tenancy.

As the Landlord did not serve the One Month Notice to End Tenancy for Cause to the Tenant as evidence for these proceedings, this document was not accepted as evidence for these proceedings. Although the document itself was not accepted as evidence, the Landlord was given the opportunity to discuss that document at the hearing.

On July 27, 2021 the Landlord submitted evidence that was previously submitted to the Residential Tenancy Branch.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed that he would not record any portion of these proceedings.

Issue(s) to be Decided

Should this tenancy end early and, if so, should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord stated that:

- The tenancy began on February 01, 2018;
- In early May of 2021, there was a flood in the rental unit that occurred because the kitchen faucet was left running, which resulted in the sink overflowing onto the floor;

- A custodian entered the rental unit in May of 2021 after noticing water in the complex;
- He does not know if the Tenant was home when the flooding occurred in May of 2021;
- The Landlord served the Tenant a One Month Notice to End Tenancy for Cause on May 17, 2021, in part because of the aforementioned flood;
- A hearing has been scheduled for September 23, 2021 to consider the merits of the One Month Notice to End Tenancy for Cause;
- He has applied for an early end to the tenancy, in part, because he is concerned there will be another floor prior to September 23, 2021;
- On June 24, 2021 a commercial tenant in the residential complex observed water in the parking area below the rental unit;
- The commercial tenant knocked on the Tenant's door and received no response;
- The commercial tenant opened the Tenant's door and was met by the Tenant, who expressed surprise about the flood;
- The commercial tenant and a plumber observed the kitchen faucet running, the kitchen sink overflowing, water on the kitchen floor, and water flowing onto the carpeted area;
- The Tenant told the commercial tenant he had arrived home shortly before the commercial Tenant entered the unit and he did not notice the water running;
- He has not yet determined the damage to the rental unit/residential complex, although he is concerned there may be mold and "tear down" issues;
- He has applied for an early end to the tenancy, in part, because he is concerned that the Tenant is either intentionally failing to report flooding or he is unable to recognize the urgency of the situation; and
- He is concerned that the Tenant's failure to recognize/report urgent issues may result in further damage to the unit, which may be even more dangerous (such as a fire).

The Landlord submitted documentary evidence from the commercial tenant that supports the testimony of the Landlord.

The Landlord submitted photographs that show significant water in the rental unit as a result of the flood on June 24, 2021.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and the Landlord may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

On the basis of the undisputed evidence, I find that the Tenant or a guest of the Tenant left the kitchen faucet running on at least two occasions in May and June of 2021, which resulted in flooding in the rental unit.

On the basis of the undisputed evidence, I find that on both occasions the flooding was discovered by a third party, rather than being reported by the Tenant.

I find that the flooding, the failure to report the flooding, and the failure to respond to the flooding in a reasonable manner puts the Landlord's property at significant risk.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 of the *Act* to take effect.

I find the Landlord's concern that there will be another flood in the rental unit, or an even more urgent issue, if this tenancy continues is a reasonable concern. I find that the concerns are reasonable because:

- There have been two floods within a two month that are clearly related to neglect and or nefarious intent;
- The Tenant has, on at least one occasion, either intentionally failed to report the flooding or has been unable to respond appropriately to a very obvious flooding issue; and
- His inability to recognize/report urgent issues could result in further issues that pose a significant risk to the Landlord's property and/or to occupants of that property.

As I find it would be unreasonable to the landlord or other occupants of the residential property to wait for this tenancy to end pursuant to section 47 of the *Act*, I grant the Landlord's application to end this tenancy early and for an Order of Possession.

Conclusion

I grant the Landlord an Order of Possession that is effective 5 days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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: July 27, 2021

Residential Tenancy Branch