



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1284969 BC Ltd
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; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:10 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 TM and MM, 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 landlord's representatives affirmed they understand it is prohibited to record this hearing and that they must be civil and orderly at all times during the hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept TM's testimony that the tenant was served with the application and evidence (the materials) on August 06, 2021 by attaching the materials to the rental unit door, in accordance with section 89(2)(d) of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if attached to a door, on the third day after it was attached. The tenant is deemed to have received the materials on August 09, 2021, in accordance with 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 the tenancy?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, 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 landlord; it is the landlord's obligation to present the evidence to substantiate the application.

TM affirmed he purchased the rental building on February 01, 2021 and the tenant was occupying the rental unit at the time. Monthly rent in the amount of \$650.00 is due on the first day of the month. TM assumes the landlord holds a security deposit in the amount of \$325.00. Later TM stated she does not know if there is a security deposit. MM testified he did not receive a security deposit. Later MM said he received a 325.00 security deposit and holds this amount in trust.

The landlord applied on July 20, 2021 to end the tenancy early under section 56 of the Act. The landlord stated:

Tenants have engaged in the sale of drugs which has generated dangerous traffic, damage to doors and exits, fire system, broken glass, damaged drywall, human waste around and in residential property including neighbouring properties, and arson. There have been many rants on Facebook regarding the number of vehicles, including taxis that are going in and out of the parking lot with someone running to the vehicle and exchanging something.

MM affirmed the tenant sells drugs in the rental unit and that drug users are defecating and using drugs in the hallways. MM stated he was assaulted in the rental building and that the neighbours are afraid of the tenant. MM entered the rental building three times in the last thirty days and observed syringes and human excrements in the hallway and visitors entering the tenant's rental unit for short visits.

MM testified the security cameras in the building were damaged about three months ago and the issues with the tenant are ongoing since February 01, 2021.

MM said the tenant pulled a false fire alarm on June 19, at 8:30 P.M. and was arrested. The landlord submitted an email from an electrician dated July 23, 2021:

I have been called to that apartment building more times than I can count for false fire alarms, from people pulling the Fire Alarm for reasons that I can not explain.

A few months ago, I got a call from [redacted for privacy]. [redacted for privacy] had been called out for, I believe, the third time that night, for false Fire Alarms. The Fire Alarm Panel would not clear of trouble. I was called to come and fix the problem or the Fire Department would have to fire watch the building all night or do fire checks every half an hour at the apartment owners expense. Saturday night when I arrived around 8:30pm, I reset the pull stations that had been pulled, and the troubles cleared and the system was in proper working order by 9:00pm. As I was leaving I ran into [tenant] in the [redacted for privacy] floor hallway, he said the bell stopped ringing and I replied, yes I fixed the problem. At that time, he looked right at me and pulled the pull station on the 4th floor West stairwell, setting off the Fire Alarm again.

This took more time to repair, also the owners expense and more time away from my family.

The landlord submitted an email from the police dated July 20, 2021:

RCMP attended [rental building] 160 times between January 2021 and July 20, 2021 for a variety of reasons ranging from assaults, breach of the peace, mental health calls, assist ambulance and MCFD, a few sudden deaths (not suspicious) and lots of noise complaints.

With regards to the incident where [tenant] pulled the fire alarm in front of your contractor (electrician), I can confirm that the information has been sworn and thus, the charge of "false fire alarm" was approved. That's the extend of the case. It's very straight forward. [Tenant] has yet to be served his summons. I cannot give you any actual reports as they need to be reviewed and properly vetted.

TM affirmed she was aware that the tenant sells drugs, but she did not serve a one month notice to end tenancy for cause because she did not have evidence. Later TM stated she served a one month notice to end tenancy and that a hearing is scheduled for December 2021. I inquired the landlord about the reasons the one month notice was served and she answered: "why does it matter? The tenant did not attend this hearing."

I inquired the landlord about specific dates and evidence that the tenant is engaged in selling drugs. The landlord became frustrated and insisted they have enough reasons to obtain an order for the early termination of the tenancy.

Analysis

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.

When the tenant does not attend the hearing, the landlord continues to have the onus of proof to establish the claim.

Section 56 (2) of the Act 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 explains the importance of landlord providing evidence that is unreasonable or unfair to wait to end the tenancy with a one month notice:

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)

The police email references the police attended the building 160 times between January and July 2021 but indicates there is only one incident related to the tenant.

I find that pulling a fire alarm is not serious enough to end a tenancy under section 56 of the Act. Furthermore, the false fire alarm incident happened on June 19, 2021 and the landlord submitted this application on July 20, 2021. The landlord did not explain why he submitted this application 31 days after the false fire alarm incident. I find it is not

unreasonable or unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act for the fire alarm incident.

The landlord did not submit evidence to prove the tenant is engaging in selling drugs. The landlord provided a vague and contradictory testimony during the hearing. I note that I asked the landlord about specific dates and evidence that the tenant is engaging in selling drugs and the landlord became frustrated and insisted he has enough reasons to obtain an order for the early termination of the tenancy. TM first affirmed she did not serve a one month notice to end tenancy because she did not have evidence, then she stated she served a one month notice and a hearing is scheduled for December 2021. The landlord did not submit the complaints posted online against the tenant.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, the tenant, or someone the tenant had permitted on the property, has engaged in any of the actions of section 56(2)(a) of the Act.

Therefore, I dismiss the landlord's application without leave to reapply.

As the landlord is not successful in this application, the landlord must bear the cost of his filing fee.

Conclusion

I dismiss the landlord's application without leave to reapply. The tenancy continues in accordance with the Act.

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: August 30, 2021

Residential Tenancy Branch