



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the materials for this hearing and have not served any evidence of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end of the tenancy and Order of Possession?
Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began on July 1, 2020. The monthly rent is \$1,425.00 payable on the first of each month. A security deposit of \$712.50 and pet damage deposit of \$200.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in multi-unit rental complex with approximately 140 total units. A copy of the written tenancy agreement was submitted into evidence.

The landlord submits that the tenant's behaviour has become increasingly aggressive and combative towards on site staff, third party tradespeople attending at the rental property and other occupants of the rental building. The landlord submitted into documentary evidence correspondence and written complaints from tradespeople, staff and occupants of the building regarding the tenant's conduct in their rental suite and in common spaces of the property.

The complaints include that the tenant screams and shouts obscenities loudly inside the rental unit, on their deck and in common areas that are audible inside neighboring units and outside of the building, that the tenant routinely accosts, shouts and curses at staff and passerby in common areas, that the tenant leaves offensive notes on the doors of neighboring units and has followed individuals in common areas interfering with their passage and berating them loudly.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated June 23, 2021. The tenant confirmed receipt of the notice but stated they had no intention of complying with the notice as they believe the reasons cited by the landlord are fabricated and without merit.

The landlord said that the tenant's behaviour has continued to escalate requiring routine intervention by the police. The landlord cited one incident on July 7, 2021 when they found that the tenant had shoved a package of rotting fish into the landlord's mail slot.

The landlord testified that the tenant's actions have continued and they have received multiple complaints from other occupants and visitors to the rental property. The landlord submits that the tenant's unacceptable behaviour is increasing in frequency

and severity, and it would be unreasonable and unfair to the other 140 occupants of the rental property to wait for a notice to end tenancy to take effect.

The tenant disputes that they have engaged in the conduct described by the landlord or noted in the documentary evidence. The tenant submits that they keep to themselves, have not interacted with other occupants of the rental property and that the landlord's evidence is either fabricated or exaggerated.

The tenant submits that they believe their rental unit is routinely broken into by unknown individuals who steal foodstuffs and personal items, leave other items and create a mess of the suite. The tenant said that they discovered the rotted fish inside of their rental unit and left it in the landlord's mail slot, as a non-verbal message to inform them that someone has been breaking into their suite.

The tenant submits that the landlord has breached their duty to provide the tenant with quiet enjoyment of the rental unit and the present application is a baseless and vindictive action by the agents of the corporate landlord with whom there is a personal animosity.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.

- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

it would be unreasonable, or unfair to the landlord, the tenant 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.

Based on the totality of the evidence before me, including the testimonies of the parties and documentary materials, I find that the landlord has provided sufficient evidence to show that the tenant has significantly interfered with and unreasonably disturbed other occupants of the residential property and the landlord.

While the tenant disputes that they have engaged in conduct that could reasonably be considered interference, I find the landlord has submitted overwhelming evidence by way of the written complaints and correspondence from other occupants, tradespeople and staff to establish on a balance of probabilities that there has been disturbance and interference caused by the tenant.

I find that the evidence of the landlord is consistent, credible and compelling. I find the multiple complaints from different individuals to be sufficient to establish that the tenant's conduct has caused disturbance and interference to a large number of people and was not an isolated incident or limited to select parties.

While the tenant testified about a perceived breach of their right to quiet enjoyment under the tenancy agreement and the Act, I find that any such breach does not give rise to a tenant's ability to act in a manner that causes disturbance or interference. While I make no determination on the tenant's complaints that there has been ongoing unauthorized entry into their rental unit leaving items, breaking fixtures, and leaving rotted fish hidden in the suite, I find that this would not justify the tenant shoving the rotted fish into the landlord's mail slot.

Similarly, I find that the preponderance of evidence before me supports the landlord's position that the tenant has caused unacceptable noise in their rental unit and accosted parties in the common areas of the rental property. I do not find the tenant's submission that any interaction with others was welcomed to be supported in the documentary materials. The evidence before me shows that the tenant's conduct is unwelcome and distressing for the other occupants and visitors to the rental building.

I accept the evidence of the landlord that the conduct of the tenant has escalated in frequency and severity such that police are frequently called to attend at the rental unit. I accept the landlord's submission that the other occupants and staff of the corporate landlord have expressed concern for their safety and well-being due to the tenant's behaviour. Based on the escalating situation I find it would be unreasonable to wait for a Notice to End Tenancy under section 47 to take effect. I therefore issue an Order of Possession to the landlord pursuant to section 56 of the Act.

As the landlord was successful in their application, they are also entitled to recover their filing fee from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$712.50 to \$612.50.

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 12, 2021

Residential Tenancy Branch