



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City of Vancouver
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

The landlord filed an Application for Dispute Resolution on June 8, 2021 seeking an order to end the tenancy on the basis that the tenant poses 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 August 19, 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.

The landlord stated that they delivered notice of this dispute resolution to the tenant via the tenant’s designated social worker who is known to the landlord. The landlord served the notice of this hearing, and their prepared documentary evidence via registered mail. This was to the address of service they obtained directly from that social worker. This is a hospital location where the tenant remains since an incident on May 19, 2021 prompted the tenant’s admission to the hospital.

From what the landlord presents here on notifying the tenant of this hearing, I am satisfied they served the tenants the Notice of Hearing in a method prescribed by the Act. Additionally, I find the tenant was afforded ample time to prepare a response, with the matter adjourned at the landlord’s request on July 22, 2021.

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

The landlord confirmed there was a tenancy agreement in place. They provided a copy of that agreement for this hearing. The tenant moved into the unit in November 2017, paying rent of \$375 monthly.

The landlord provided a report from City of Vancouver – Non-Market Housing that indicates the incident on May 19, 2021 at 2:30 pm involved a visit from ambulance, fire, and police services. This contained a full description of the incident.

Other residents in the building reported a fire and used the fire alarm to alert the entire building. One resident reported: “there was a lot of smoke [in the rental unit] and the person in the room [i.e., the tenant] would not leave.” When asked directly by the landlord about the incident, the tenant proceeded to laugh, exit the building, and wait across the street. As the landlord described in the hearing: “[The tenant] thought it was a joke.”

The fire resulted from the tenant lighting a pile of clothing on fire. This required use of a fire extinguisher and created a lot of smoke in the building. This left damage to the floor and a toxic material from the fire extinguisher. The landlord had to arrange for a restoration service visit for the extent of the damage.

Since the incident, the tenant has not returned to the building or their rental unit. They remain in hospital care as of the date of this hearing.

Analysis

The *Act* s. 56 of the *Act* 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' 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 and testimony of the landlord concerning the incident described here. I find there is sufficient evidence to show the tenant is a source of legitimate concern of significant risk to the property, as well as the safety of the landlord and other building occupants. This is as set out in s. 56(2)(a) – I find each subsection applies to this situation.

From the evidence 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 was 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: August 23, 2021

Residential Tenancy Branch