



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOBERLY INVESTMENTS 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* ("Act") for:

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

The two tenants did not attend this hearing, which lasted approximately 13 minutes. The landlord's three agents, landlord CW ("landlord"), "landlord LW," and "landlord RL" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. and ended at 9:43 a.m. 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's three agents and I were the only people who called into this teleconference.

The landlord and landlord LW both confirmed that they are property managers for the landlord company named in this application and they had permission to speak on its behalf. The landlord confirmed that the landlord company owns the rental unit. Landlord RL confirmed that he is the head of building maintenance and that he had permission to represent the landlord company at this hearing.

At the outset of this hearing, I informed the landlord's three agents that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by anyone. The landlord's three agents all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord's three agents. They had an opportunity to ask questions. They confirmed that they were ready to proceed with this hearing and they wanted me to make a decision. They did not make any adjournment or accommodation requests.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlords filed this application on August 11, 2021 and a notice of hearing was issued by the RTB on August 23, 2021. The landlord was required to serve that notice, the application, and all other required evidence to the tenants, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord stated that the tenants were served with the landlord's application for dispute resolution hearing package on August 24, 2021, by way of posting to their rental unit door. The landlord provided a signed, witnessed proof of service for same. In accordance with RTB *Rules* 10.2 and 10.3 and sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on August 27, 2021, three days after its posting.

Issues to be Decided

Is the landlord entitled to an early end to tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord and landlord RL, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on December 1, 2011. Monthly rent in the amount of \$1,552.00 is payable on the first day of each month. A security deposit of \$640.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenants continue to reside in the rental unit.

The landlord stated the following facts. The landlord requires an order of possession effective immediately against the tenants. The landlord has a safety concern, due to the condition of the tenants' rental unit, as it is full of garbage and feces in the bathtub. There is no access to the electrical panel. There was an annual fire inspection at the rental building in January 2021, and the tenants denied entry to their rental unit. Landlord RL and landlord LW inspected the rental unit on August 11, 2021 and took photographs of the condition and provided copies for this hearing. The annual fire inspection was rescheduled and on August 20, 2021, the fire department completed an inspection of the rental unit and issued a violation notice on the same date to the landlord. The landlord provided a copy of this notice and said that the notice was also posted to the tenants' rental unit door on the same date. The notice states that there were bugs and biohazards inside the suite, combustible materials were to be reduced and removed from heat sources, egress and access were to be clear and free, and smoke alarms were to be installed and maintained. The tenants did not comply with any of the above terms, they did not communicate with or respond to the landlord after the violation notice was posted to their door, and the fire department will be returning on September 16, 2021 to conduct a re-inspection.

Landlord RL stated that he completed an inspection of the rental unit with landlord LW on August 11, 2021. He said that there was food in the fridge that was rotting and full of mold and there were bugs all over the rental unit.

Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (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...*

On a balance of probabilities and for the reasons stated below, I find that the tenants seriously jeopardized the health, safety, and lawful rights and interests of the landlord and other occupants at the residential property.

I accept the affirmed undisputed testimony of the landlord and landlord RL at this hearing. Landlord LW and landlord RL inspected the rental unit on August 11, 2021 and provided photographs of same. The photographs show the deplorable condition of the rental unit, including feces in the bathtub, a large pile of toilet paper with feces stacked high against the bathroom wall, rotting and molding food stacked inside the refrigerator, and a significant amount of clutter stacked all over the rental unit. The fire department attended at the rental unit on August 20, 2021, issued a violation notice of multiple fire and safety hazards, including bugs and biohazards, and issued a re-inspection notice for September 16, 2021. I find that the condition of the rental unit causes serious health and safety risks for all occupants at the residential property and jeopardizes the lawful rights and interests of the landlord.

I also find that the landlord's application meets the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord provided sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to take effect.

I find that the landlord provided sufficient evidence regarding the urgency and seriousness of this situation. I accept the undisputed evidence of the landlord that the tenants left their rental unit in a deplorable condition since August 11, 2021, when landlord LW and landlord RL inspected the rental unit. I accept the undisputed evidence of the landlord that the tenants have not responded to the fire department notice from August 20, 2021 or this application from August 24, 2021, that were both posted to the tenants' rental unit door. I accept the undisputed evidence of the landlord

that the tenants have not communicated with the landlord, and none of the violations in the fire department notice were remedied by the tenants since August 20, 2021.

Accordingly, the landlord's application for an early end to tenancy is allowed. The landlord is granted an order of possession effective two (2) days after service on the tenants.

As the landlord was successful in this application, I find that it is entitled to recover the \$100.00 filing fee from the tenants. I order the landlord to deduct \$100.00 from the tenants' security deposit of \$640.00. The remainder of the tenants' security deposit of \$540.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

Conclusion

The landlord's application is allowed. I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). Should the tenant(s) 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.

I order the landlord to deduct \$100.00 from the tenants' security deposit of \$640.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenants' security deposit of \$540.00 is to be dealt with at the end of this tenancy in accordance with section 38 of 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: September 07, 2021

Residential Tenancy Branch