



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlords applied for:

- an order for early termination of a tenancy, pursuant to section 56;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:32 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. Landlord RD and agent KW (the landlord) attended the hearing and were 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 RD, agent KW and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this 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 the landlord's testimony that the tenant was served with the application and evidence (the materials) in person on September 02, 2021 at 1:34 P.M., in accordance with section 89(2)(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Are the landlords entitled to:

1. an order for early termination of a tenancy and subsequent order of possession?
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 landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on April 30, 2021. Monthly rent is \$1,450.00, due on the first day of the month. The landlord collected and holds a security deposit of \$725.00 and a pet damage deposit of \$725.00. The tenancy agreement was submitted into evidence.

The landlord stated that on July 15, 2021 the tenant threatened tenant PP. The landlord submitted an email from tenant PP dated July 15, 2021:

The first time I had a run in with [tenant] she was sitting on the curb on [redacted for privacy] having a smoke. One of the other tenants who smokes goes across the road and sits on the stone wall so I thought I would suggest that to her as she was right at exhaust level where she was sitting. I called out to her and told her how the other person sits on the wall which is more comfortable. **She jumped up and said Are you going to call the f---ing pigs on me?**

(emphasis added)

The landlord testified other tenants in the rental building submitted noise complaints regarding loud banging noises emanating from the tenant's rental unit. On July 26, 2021 the landlord inspected the rental unit and observed the tenant damaged the kitchen cupboards and the bathroom mirror. The landlord submitted into evidence photographs taken during the inspection.

On August 04, 2021 the landlord served a caution notice to the tenant. It states:

A complaint from a fellow tenant was made on the evening on July 23, 2021 regarding loud banging noises coming from unit [redacted for privacy]. Upon an inspection from the building manager and his assistant on July 26, 2021, it was noted that there was

damage to the apartment that was not noted in the incoming inspection form. Notably, two broken mirror panels in the bathroom, a kitchen cupboard hinge; and, a detached wood fence board from the back porch. Please note, that this is a caution notice only, however, further damage could lead to an eviction notice.

The landlord said the tenant yelled at him when she received the caution notice on August 04, 2021: "drive your truck into the ocean" and showed her middle finger to the landlord. On that same date the tenant emailed the landlord:

Hello,

I'm that crazy living in [redacted for privacy]

Due to my chronic and constant triggering of triggers from severe intractable PTSD, I tend to be

1. loud because loud means aggression to men = safer for me.
2. I do have tech rage, mostly IO related. And I can't destroy so I tend to yell and throw small things that don't injure.
3. In constant states of medication, mostly these days beta-blockers for adrenaline. It's always fun to spend a night in jail with chest palpitations the whole night and never get your meds...lol
4. I DO DO DO use anti-psychotics, but these days only to get deep sleep...

The landlord affirmed that tenant NY lives next door to the tenant and she stated that because of the constant loud noise at night emanating from the tenant's unit she has not been able to sleep, and her health has deteriorated. On August 05, 2021 tenant NY emailed the landlord:

Hey [landlord], good morning! Hope you are having a good August so far! I'm not! Can't seem to get any sleep at night due to unit [tenant's address].

The last two nights have not been good. Please consider this a official noise complaint for [tenant's address]. The nightly noise and erratic behaviour is becoming intolerable. Now even my cats are scared and spend most nights hiding. This is also stressing me out now which is why I am emailing.

Last night/this morning : 4 am She was out on the balcony yelling and swearing, slamming doors. I opened the door and asked her to be quiet and was yelled at in response. "are you fking drunk?" she yelled and laughed, then went down to the side of the house for about 10 minutes swearing and talking loudly to herself, up and down the back stairs. Laughing. This continued back and forth until 5:30. I get up for work at 6 am :(

The previous night wasn't 'as' bad, but just after midnight she was yelling, swearing and slamming out on the balcony from about midnight to 1 am sporadically. Usually this is followed by laughter. I think it's a fun thing for her to disrupt us, or something? I am

getting deeply disturbed by the lack of sleep now and this is starting to interrupt my daily life.

(emphasis added)

On August 15, 2021 tenant NY emailed the landlord at 4:47PM:

Hi [landlord], I would like to file another official noise complaint for[tenant]. From 1:30 - now(4:30 am) **she has been slamming, yelling and causing a disturbance. As she goes in and out she said' don't forget to call the cops neighbor". I have had no sleep for another two nights.**

The police were here Saturday afternoon and when they knocked and she would not answer her door - they knocked on MY door until I answered, they were looking for '[redacted for privacy]' the latest person who called the police to report [tenant].

If nothing is done about her I will be giving notice to move out.

(emphasis added)

On August 15, 2021 tenant NY emailed the landlord at 10:36PM:

Hi, for the record again tonight (9:05 pm) the police attend [tenant's address]. They knock a few times, [tenant] pretends she isn't home - they leave.

[...]

Also please note (as we spoke today) **that I have taken time off work now due to this, and it is becoming an unlivable situation for me if immediate change doesn't happen here. My cats are suffering, hiding and afraid for hours every night. This is not fair to them and is unhealthy for both animals. I have physical and emotional stress induced issues and am having troubles eating and living daily life.** You saw me today. I am at my limit with this.

[...]

I have noted on my actual calendar for weeks now 'the incidents'. I have over 10 violent, time stamped recordings of her now at all hours. In some she is yelling at me directly.

(emphasis added)

Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it 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 states:

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)

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, on a balance of probabilities, 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.

Based on the undisputed, convincing and detailed testimony offered by the landlord and the emails submitted by tenants PP and NY, I find, on a balance of probabilities, pursuant to section 56(2)(a)(ii) of the Act, the tenant has seriously jeopardized the health and safety of other occupants of the rental building by constantly making loud noises, threatening the landlord and the other occupants of the rental unit. Furthermore, the tenant admitted on August 04, 2021 that she is loud and that she throws objects in the rental unit. I find the tenant's constant behaviour is a significant threat to the health and safety of the landlord and other occupants of the rental building.

If the landlord issued a notice for cause under section 47 of the Act, the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenant. I find that pursuant to section 56(2)(b), it would be unreasonable for the landlord to wait to end the tenancy by issuing a notice for cause due to the significant threat to the health and safety of other occupants of the rental building caused by the tenant.

I grant an order of possession effective two days after service on the tenant, pursuant to section 56(2) of the Act.

As the landlords are successful in this application, the landlords are entitled to recover the filing fee.

Conclusion

I grant an order of possession to the landlords effective **two days after service of this order**. 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 section 72(2)(b), the landlords are authorized to deduct \$100.00 from the security deposit to recover the filing fee

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 15, 2021