



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

The landlord applied for an order ending the tenancy and an order of possession pursuant to section 56 of the *Residential Tenancy Act* ("Act"). In addition, they applied to recover the cost of the filing fee pursuant to section 72 of the Act.

A dispute resolution hearing was held on September 24, 2021 at 9:30 AM. The landlord and his property manager attended the hearing, while the tenants did not. The landlord gave evidence that he served the tenants in-person with the Notice of Dispute Resolution Proceeding shortly after the application for dispute resolution was made. Based on evidence provided it is my finding that the tenants were served in compliance with the Act and the *Rules of Procedure*.

The landlord was affirmed, and Rule 6.11 of the *Rules of Procedure* was explained. Finally, it is noted that relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

Issues

1. Is the landlord entitled to an order under section 56 of the Act?
2. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

The tenancy began on April 1, 2021. Monthly rent is \$2,400.00 and the tenants paid a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00. These deposits are currently held in trust by the landlord. There is a copy of the tenancy agreement in evidence.

The landlord has applied for an order under section 56 of the Act because, as described in his application (reproduced as written):

Tenant has been moving in unauthorised additional people to squat on the property. The shed is being used for 2-3 people. There are 2 rv's on the property, 1 confirmed being occupied. Lots of damage to property. Tenant has stated he will continue to move people in and squat on the property until the hearing and only filed with the RTB to "buy time" until we can force him out [this references the tenants' application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, for which there is a hearing on December 10, 2021]. The property has been significantly damaged and the tenant will not allow us inside to see additional damages.

The landlord testified that the tenants have allowed unknown individuals to squat on various areas of the property. Indeed, one squatter – who is heavily involved in drug use – is or was in an RV that has a sewage pipe emptying onto the front yard. And the overall condition of the property is such that there is, and has been, significant damage.

According to the landlord, the tenants have also rented out or leased the garage to persons who are not supposed to be there. The garage has been locked and the landlord and his property manager have been unable to gain access to the garage, despite giving notices to enter. On one occasion, the landlord attended to the property to discuss rent arrears with the tenants, and the tenant came at the landlord and threatened violence. The tenant called the police, who in turn told the landlord that the tenants ought to leave or else there might be further trouble or violence.

It should be noted that while the tenants themselves have appeared to have left the property, some of their property remains. There also appears to be at least one squatter still residing on the property. Finally, as reflected in the order of possession, there are new tenants currently residing in the house, and they are permitted there by the landlord; there is a separate tenancy agreement with those new tenants.

In support of his claim the landlord submitted several photographs depicting the layout and condition of the property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 56(1) of the Act permits a landlord to 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 the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

To grant an order under section 56(1) of the Act I must be satisfied 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, 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.

In this case, the landlord's testimony, supported by direct photograph evidence of the state and condition of the property, persuade me to find that the tenants (and their unauthorized subtenants) have seriously jeopardized the lawful right and interest of the landlord, and, that they have put the landlord's property at significant risk.

Last, the tenant's threat to use violence against the landlord is, I find, an action that has significantly interfered with and unreasonably disturbed the landlord. Suffice to say, it would be wholly unreasonable for the landlord to have to wait for a notice to end tenancy issued under section 47 of the Act.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his application for an order under section 56 of the Act.

Pursuant to 56 of the Act, it is hereby ordered that the tenancy is ended effective immediately and that the landlord is granted an order of possession. A copy of this order of possession shall be issued to the landlord in conjunction with this decision. As explained to the landlord and his property manager it is their responsibility to serve a copy of the order of possession on the tenants (and, for that matter, to any unauthorized subtenants still residing on the property).

The order of possession will, however, specifically exclude three persons (the two current tenants and their minor child), who have the legal right to occupy the rental unit.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in his application, I grant him \$100.00 in compensation to cover the cost of the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain \$100.00 of the tenants' security deposit in satisfaction of the above-noted award.

Conclusion

The landlord's application is granted.

I hereby grant the landlord an order of possession, which must be served on the tenants and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 24, 2021

Residential Tenancy Branch