



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1801 Chapman Street Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

The landlord filed an Application for Dispute Resolution on October 3, 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 seek 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 October 28, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Preliminary Matters

The landlord attended the hearing. The tenant joined the conference call 17 minutes after the start of the hearing, with assistance.

The landlord stated that they delivered the notice of this hearing in person to each tenant. They visited to the rental unit on October 8, 2021. This was with a witness, and this particular visit to the rental unit involved the police. This notice included the evidence prepared by the landlord in advance for this hearing.

Upon entering the conference call, the person assisting the tenant indicated they had some of the documentation. This is evidence that the tenant received the notice of this hearing, and the package of landlord evidence. For the purposes of this hearing, I find the tenant was served notice and evidence on October 8, 2021 as provided by the landlord in their affirmed testimony at the outset. There was no dispute from the tenant that they were not served the notice.

From what the landlord presented here on giving the tenant notice of this hearing, I am satisfied they served the tenant a formal notice of this hearing, and their prepared evidence, in a method prescribed by s. 89(2)(a) of the *Act*.

The tenant's demeanour in the hearing was of concern. They had an assistant who did not know about the matter at all and could not speak to the issues. The tenant was asked to not interrupt others when speaking but could not follow that instruction. What the tenant did provide in their statements was unrelated to the topic being discussed, incomprehensible, and laced with profanity.

Issues 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 compensation for the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord confirmed details of the tenancy agreement and submitted a copy for my review. The tenancy started on April 1, 2020 on a month-to-month basis. The rent amount is \$850 per month, and the agreement specifies that the tenant is to pay on the 1st of each month.

The landlord applies for an end of tenancy based on the "immediate and severe risk to the rental property, other occupants or the landlord." This is for several incidents over the course of the tenancy, many of which involved the police. The landlord provided copies of warning letters sent to the tenants at the rental unit address. These are dated: May 11, August 20, August 27, September 4, September 21, September 23, 2021. One final letter to the tenants is in the landlord's evidence, sent the day after the landlord made their Application for this hearing.

In the hearing, the landlord raised the following issues:

- The rental unit is the site for drug use and/or drug sales. Previously, the police advised the landlord that one visitor in particular was known to them for drug-related felonies. The landlord provided images of the interior of the rental unit that shows a number of different individuals; according to the landlord, these are people who use drugs and organize their stolen property.
- The tenants have a number of extra people living in the rental unit. This is the subject of a number of the landlord's letters to the tenants throughout 2021. The landlord specified this violates the tenancy agreement section 11 3.
- One of the tenants was undressed and yelling outside the rental unit in September 2021. This was disclosed by the neighbours to the landlord, and the landlord informed the tenants that neighbours and students who walk to school are very scared.
- The smoke alarm was removed. This was identified by fire inspectors who made a routine visit. To compensate, the landlord installed battery-operated smoke alarms that were also disconnected. The landlord's letters to the tenant set out that this is a problem for risk of damage to the property and other residents.
- The fire inspector also flagged the issue of hoarding, where they observed many, many items in the rental unit. This is a problem with respect to "the sheer volume of combustible material" increasing the fire hazard.
- On August 20, a guest of the tenants threatened another building resident in the laundry room. This was set out to the tenants in a letter that same day, specifying "violence and threats of violence" will not be tolerated. This was also reported to police.
- The landlord considers the state of the unit, full of garbage, to be damage to the property. On August 26, one of the tenants was arrested for breaking a window on the property, and previously broke an outlet with a rock.
- The landlord is working on upgrading the heating system in the building. This entails visits to the rental unit from workers, with proper notice to the tenants. Workers were entering and trying to work, yet the tenants and/or their visitors interfered. This means the contractors and/or the landlord are having to enter the rental unit with a police escort.

The tenants are currently overholding after the One-Month Notice to End the Tenancy for Cause specified the end-of-tenancy date to be September 30, 2021. The tenants did not challenge that notice by filing an Application for its cancellation or withdrawal with the Residential Tenancy Branch.

The landlord added that the last visit from the police was on October 19. This was because one of the tenants laid down in the parking lot, making a scene. Police and fire attended and after getting information, determined that the tenant “made the whole thing up for attention.”

I reviewed these details with the tenant in the hearing. The tenant did not provide clear responses or explanations to address these points raised by the landlord.

Analysis

The *Act* s. 56 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 [*landlords’ notice: cause*], and
 - (b) granting the landlords an order of possession in respect of the rental unit.

Following this, s. 56(2) sets out two criteria. First, the landlords must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlords 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 landlords of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlords or another occupant;
 - (iii) put the landlords’ property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlords’ 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 landlords;
- (v) caused extraordinary damage to the residential property . . .

I have considered the evidence of the landlord concerning the conduct of the tenants and their guests. There are a number of incidents in question. There is clear evidence of a threat made to another resident, damage to the property, and disturbances of a nature that interfere with and/or disturb other residents. Additionally, there is firm evidence of criminal activity, in the form of multiple police visits. The police provided reliable information to the landlord on what they observed/discovered and the individuals involved.

I also find the issues stemming from the fire inspector's visits are those which jeopardize the health and safety of others. The situation in the rental unit is combustible, both with disabled smoke alarms and an extreme amount of collected materials.

In sum, I find all of the subsections listed in s. 56(2) above apply to the current situation in the rental unit. As attested to by the landlord, this has all occurred while the tenants were living there.

First, from the evidence I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the landlords to wait for a set-period Notice to End Tenancy to take effect. The tenants maintain occupancy of the rental unit after a specified end-of-tenancy date has passed. I find this warrants an expedited end to the tenancy. I so grant an Order of Possession in line with this rationale.

Conclusion

For the reasons above, I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant a monetary order for the landlord's reimbursement of the \$100 Application filing fee. This monetary order may be filed in the Provincial Court (Small Claims) 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: October 29, 2021

Residential Tenancy Branch