



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

The Landlord sought an early termination of the rental unit tenancy by Expedited Hearing pursuant to Sections 56 and 62 of the *Residential Tenancy Act* (the "Act"). The Landlord also sought recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, MP, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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 MP and I were the only ones who had called into this teleconference.

MP was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. MP testified that they were not recording this dispute resolution hearing. MP was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Notice of Dispute Resolution Proceeding package was served by the Landlord on the Tenant by leaving the package on the front door mat of the rental unit on September 29, 2021 (the "Notice"). MP testified that the front door is located in the carport of the home, the package was quite heavy so would not blow away, and a proof of service was provided for the Notice. I find the Notice was duly served according to Section 89(2)(d) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of early end of tenancy and an Order of Possession?
2. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This periodic tenancy began on November 1, 2021. Monthly rent is \$1,400.00 payable on the first day of each month. A security deposit of \$700.00, and a pet damage deposit of \$700.00 were collected at the start of the tenancy and are still held by the Landlord.

MP testified that the home has an upstairs tenant and the Tenant in this matter downstairs. On August 12, 2021, the upstairs tenant had an altercation with the Tenant's boyfriend which resulted in the tenant experiencing verbal abuse from the boyfriend. As noted from the upstairs tenant's email submitted in the Landlord's evidence, *"the man charged at me and tried to push his way into my house stating that he as [sic] going to kick the shit out of me."* The next day the tenant discovered that his vehicle charging station in the carport was damaged. MP stated that a police file (2021-34855) was opened on August 15, 2021 in regard to this altercation.

On September 14, 2021 at 2 AM, the upstairs tenant called the police again when and he and his children were awoken by very loud bangs and yelling coming from outside. It was the Tenant and her boyfriend arguing. The police escorted the boyfriend away.

On September 25, 2021, the upstairs tenant again had a run in with the boyfriend on the property. He reported to the Landlord, *"Later in the same day [the boyfriend] returned and began walking all around the property, it was clear he was intoxicated. I asked him to leave the property to which he came at me aggressively and stated that he was going to kick the shit out of me. I simply stated that I was going to call the police and then did. He stood there for 15 minutes telling me how much of a loser I was and then left before the police arrived."*

MP testified that the upstairs tenant has been a resident at the home for five or six years, he is a good tenant and they do not want to lose him. The upstairs tenant reported, *"I live in constant fear of what myself and my daughters will wake up to, come home to or witness from downstairs tenants. Since moving in it has been a constant nightmare, whether it is the abusive behavior [sic], the two continuously barking dogs all day and night [sic], the massive amounts of dog feces in the back yard (to which a fence was needed to be built) or the endless amounts of beer and alcohol cans left lying all over the property."*

MP testified that the boyfriend still comes around everyday, it's a continual problem. MP stated he wants the upstairs tenant to feel safe in his home.

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 56 of the Act establishes the grounds whereby a landlord may make an application for dispute resolution to request an early end to tenancy and an order of possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 of the Act for a landlord's notice for cause.

In order to end a tenancy early and issue an order of possession under Section 56, a landlord has the burden of proving under Section 56(2) that:

- (a) The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health, safety, or lawful right or interest of the landlord or another occupant, engaged in illegal activity, or put the landlord's property at significant risk; and,

- (b) That it would be unreasonable or unfair to the landlord or other occupants to wait for a one month notice to end the tenancy for cause under Section 47 of the Act to take effect.

I find that the Tenant's boyfriend has significantly interfered with or unreasonably disturbed another occupant and the Landlord of the residential property. The situation continues and I find it would be unreasonable, or unfair to the Landlord or the upstairs tenant of the residential property, to wait for a notice to end the tenancy under Section 47 [landlord's notice: cause] to take effect.

I find the Landlord has satisfied me that an order to end this tenancy early is warranted and is entitled to an Order of Possession, which will be effective two (2) days after service on the Tenant. In addition, having been successful, I find the Landlord is entitled to recover the filing fee paid to start this application, which I order may be deducted from the security deposit held.

Conclusion

This tenancy ends on October 23, 2021.

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

The Landlord is entitled to recover the \$100.00 filing fee and it may be deducted from the security deposit still held by the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 21, 2021

Residential Tenancy Branch