



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email address for service of this decision and order.

Preliminary Issue- Service

The landlord testified that a copy of this application for dispute resolution and evidence was posted on the tenant's door on September 16, 2021. A witnessed proof of service document stating same, and photographs of the posting were entered into evidence. The tenant testified that she received the landlord's application for dispute resolution and evidence on September 16, 2021. I find that the above documents were served on the tenant in accordance with the *Act* and are accepted for consideration.

The tenant testified that she served the landlord with her evidence on October 5, 2021. The landlord confirmed same.

Section 10.5 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states:

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

The *Rules* describe the definition of days as follows:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

Based on the testimony of both parties, I find that tenant served the landlord with her evidence on October 5, 2021, one clear day before this hearing, contrary to section 10.5 of the *Rules*. The tenant's evidence is therefore excluded from consideration.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to authorization to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on May 1, 2019 and is currently ongoing. Monthly rent in the amount of \$2,700.00 is payable on the first day of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00

were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the lower tenants have complained about a pest infestation caused by the tenant and have expressed concerns for their safety regarding the tenant's dangerous dog. The landlord testified that the tenant has seriously damaged his property and has also been frequently late on rent and has not paid rent for September and October 2021.

The landlord testified that on January 3, 2020 the car of a guest of the tenant's caught fire in the driveway of the subject rental property which caused \$15,000.00 worth of damage to the garage. The landlord testified that the tenant did not notify him of the damage and he learned about it from a neighbour. The landlord testified that he had to pay a \$2,500.00 insurance deductible for the repairs, which the tenant has not paid. Proof of the insurance deductible was entered into evidence.

The tenant testified that the car fire was a freak accident and that she called 911 and had the fire department attend and they put out the fire. The tenant testified that the landlord never asked her to pay the insurance deductible. The landlord disputed this.

The landlord testified that the tenant has caused major mouse infestations in the subject rental property by leaving piles of garbage in the garage which attract rodents. The landlord testified that the tenant refused to clean up and he had to remove the garbage and hire exterminators. The landlord testified that the tenants in the lower suite complained about the rodents and were fearful of the hanta virus and other illnesses carried by rodents. The landlord testified that the mice got into the ceiling. The landlord entered into evidence complaints from the downstairs neighbours about the tenant and the mouse infestation. The landlord entered into evidence receipts from a pest control company. The tenant did not dispute the above testimony or provide any testimony regarding the landlord's claims of garbage and pests.

The landlord testified that he personally served the tenant's roommate at the subject rental property with a One Month Notice for Cause (the "One Month Notice") on July 13, 2021 and emailed the tenant with a copy of the One Month Notice on July 13, 2021. The tenant testified that she received the One Month Notice on July 13, 2021.

Both parties agree that the tenant did not dispute the One Month Notice and agreed to move out on the effective date of the One Month Notice, that being August 31, 2021. The landlord testified that on August 28, 2021 the tenant told him that she would not

move out and that he would have to get a bailiff. This was not disputed by the tenant. The tenant testified that she meant to move out but could not find somewhere to move.

The landlord testified that he attended at the subject rental property at the end of August 2021 to complete an inspection of the subject rental property after 24 hours notice was provided to the tenant, and a large male was there and informed him that they were sick and unvaccinated. The landlord testified that he decided not to enter the property at that time due to the risk of COVID 19. The landlord testified that the male asked the landlord if the landlord would allow the tenant extra time at the subject rental property if the tenant continued to pay rent. The landlord testified that he told the tenant and the male that all monies paid would be for use and occupancy only and that the tenancy would not be re-instated. The landlord testified that the tenant did not pay rent for September and October 2021.

The tenant testified that the male in question was her daughter's father. The tenant testified that the landlord told her at the end of August 2021 that he did not want her money so she did not pay rent for September and October 2021. This was disputed by the landlord.

The landlord testified that the tenant has an aggressive pit bull that is causing distress to the tenants who live in the suite below the subject rental property. The landlord testified that the lower tenants recently informed him that the pit bull is becoming more aggressive and frequently roams the yard off leash and that the lower tenants are not able to leave their suite when the dog is in the yard for fear of being attacked. The landlord testified that the lower tenants informed the landlord that the pit bull is dog aggressive and has "gone after" other dogs in the neighbourhood. The landlord testified that the tenant's aggressive dog poses a major safety risk to the tenants in the lower suite.

The tenant testified that her pit bull is a "big boy". The tenant testified that on one occasion her pit bull noticed an unfamiliar man in the neighbour's yard and jumped the fence into the neighbour's yard and wouldn't let the man move. The tenant testified that she and her sister ran after the pit bull and had to physically lift him back over the fence to get the dog away from the man. The tenant testified that the man in the neighbour's yard was in the bushes and was very disrespectful to her during the incident. The tenant testified that there isn't a safety issue.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of 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 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

The tenant testified that her dog jumped the fence to accost a man in the neighbour's yard. The tenant testified that she had to physical carry her "big boy" over the fence to free the man in the neighbour's yard as her dog would not let him move. Based on the tenant's testimony, I find that the tenant's dog is aggressive towards humans.

I accept the landlord's testimony that the lower tenants are fearful of the tenant's dog and feel trapped inside their unit when the tenant's dog is loose in the yard. Based on the testimony of both parties I find that the tenant's dog is frequently loose in the yard. I find that the failure of the tenant to properly restrain and or train her dog have seriously jeopardized the health and safety of the lower tenants and all others who come near the subject rental property, contrary to section 56(2)(ii) of the *Act*.

I find that it would be unreasonable and unfair to the landlord and other occupants of the residential property to wait for a hearing for the One Month Notice served on the tenant on July 13, 2021 or another One Month Notice because the tenant's dog could seriously injure a person in that time. I find it unreasonable to subject the lower tenants to the possibility of a pit bull attack for any period longer than absolutely necessary. I therefore award the landlord a Two-Day Order of Possession.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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.

The landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: October 07, 2021

Residential Tenancy Branch