



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlord filed an Application for Dispute Resolution on August 30, 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. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”) on September 30, 2021. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

Both parties attended the hearing. I provided each the opportunity to present oral testimony and make submissions during the hearing.

In the hearing the landlord stated that they delivered notice of this dispute resolution to the tenant by posting it to the door of the rental unit. This included their prepared documentary evidence. The tenant who attended the hearing confirmed receipt of the same.

The tenant confirmed they did not provide documentary evidence in advance of the hearing.

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 recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of the tenancy for cause. After taking an oath from both parties, I gave each the opportunity to speak to the issue at hand.

Both parties verified the terms of the tenancy agreement: the start date of October 4, 2019; the monthly rent amount of \$1,650 and the payment of a security deposit in the amount of \$825. The landlord provided a copy of the residential tenancy agreement that was signed by both parties. At the outset, the tenant questioned the role of the landlord agent who now acted on behalf of the landlord.

The landlord provided both documentary evidence and oral testimony to show how the conduct of the tenant constitutes a reason to end the tenancy in this expedited fashion. The documents are written notices to the landlord from the strata, either imposing fines for certain incidents, or advising that fines were imminent. These involve the behaviour of the two tenants on the agreement, one of whom attended the hearing.

The incidents appearing in the letters involve the following:

- one of the tenants repeatedly was not wearing a mandatory mask when in a common area within the rental unit building;
- an extension cord running from the hallway outside the rental unit to within;
- alcohol consumption outside the building – this involved an altercation when the tenant “verbally attacked” another resident, also waving a broom and urinating in a common area;
- smell of cigarette & cannabis emanating from the rental unit and also from the rental unit balcony and in common areas;
- a verbal altercation resulting in 6 police cars in attendance.

The landlord reiterated in the hearing that claims and complaints were from multiple other residents in the building. Each of the incidents involves a breach in some form of the strata bylaws. The landlord also described their own tense interaction with the tenant. The tenant's sibling, who is the source of many complaints, was not in the hearing.

The tenant gave the following testimony in the hearing:

- they described their initial encounter with the landlord agent, using expletives at the time;
- other residents are the source of difficulty for the tenant, particularly in one instance that involved throwing rocks at the rental unit;
- incidents arose because of provocation from other residents – these were verbal altercations;
- one resident in particular is the source of the complaints against the tenants;
- they questioned whether this was a situation of emergency;
- the other tenant not in attendance at the hearing abuses alcohol; however, they are not a violent person – many complaints against the non-attending tenant did not involve the tenant here.

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 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.

Following this, s. 56(2) sets out two criteria. First, the landlord must prove the cause for issuing the Notice. Additionally, the evidence must show it would be unreasonable or unfair to the landlord 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 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 . . .

I have considered the evidence of the tenant's behaviour and I find the interactions with other residents as well as the landlord agent were inappropriate and confrontational. The tenant openly stated in the hearing that they were unsure of the landlord agent's role in managing the tenancy, and they responded in a repellent manner. Because of their direct testimony on this, I find it more likely than not they are the source of the conflicts with the other resident who gave an account.

The tenant present in the hearing could not speak to the actions of the co-tenant. That incident of intoxication, as noted in one strata infraction letter, is more serious in nature given the time of day it occurred. This detracts from the tenant's overall ability in the hearing to present why that sample incident did *not* pose an immediate and severe risk to others. What the tenant presented in the hearing does not offset the burden of proof which here lies with the landlord.

I find it more likely than not the tenants are unreasonably disturbing other residents. Given the involvement of the police, I find what the tenants perceive from others leads to severe reactions. These are ongoing, and I find they are likely to increase in severity.

Finally, matters of public health are heightened in these times, and this has increased in seriousness and concern to the point where it is a matter of personal health or safety. In these surroundings, it is legitimate for residents to be concerned about airborne illness, and wearing a mask is a common approach to reduce the spread. In this property, masks were mandated.

I find it more likely than not the tenants here are the source of concern in a grave health crisis. Combined with their ongoing negative interactions with the landlord and other residents, I find the noted incidents of the tenants being without masks is jeopardizing the health or safety of others. In one incident description, the tenants were described as jeering at another resident for their use of a mask.

Lastly, the tenant's conduct in the hearing enters into my consideration. They did not present that there were misunderstandings, and there were no words of wanting to amend the tense situation and move forward. Given this response to what has accumulated during the tenancy, I find it clear the confrontations and disturbances will continue. This is sufficient to end the tenancy in this expedited manner.

From the evidence, I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the landlord to wait for a set-period Notice to End Tenancy to take effect. The matters are serious in nature – I find this warrants an expedited end to the tenancy. I so grant an Order of Possession in line with this rationale.

As the landlord was successful in this Application, I find they are entitled to recover the \$100 filing fee.

Conclusion

For the reasons above, I grant an Order of Possession to the landlord effective **TWO DAYS after service of this Order** 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.

Pursuant to s. 72 of the *Act*, I grant the landlord a Monetary Order for the recovery of the filing fee paid for this application. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 1, 2021

Residential Tenancy Branch