



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding New Chelsea Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

The landlord filed an Application for Dispute Resolution on October 21, 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 November 23, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The tenant did not attend the telephone conference call hearing.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the notice of this hearing. This means the landlord must provide proof that they served the document using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The landlord set out that they served the notice and their evidence to the tenant via registered mail on October 26, 2021. The item was unclaimed by the tenant. The landlord provided the tracking number of the registered mail and stated they monitored its progress to know the tenant did not retrieve the mail as delivered.

Based on the submissions of the landlord, I accept they served the notice of this hearing in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the tenant's absence.

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*?

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 the landlord, I gave them the opportunity to speak to the issue.

The landlord confirmed the details of the tenancy agreement they provided as evidence for this hearing. The start date was October 1, 2013, with the agreement signed by both parties in September. The rent amount was \$510 per month, with the rent calculated based on the tenant's income.

The landlord provided photos, documents, and oral testimony to show how the conduct of the tenant constitutes a reason to end the tenancy in an expedited fashion. The documents consist of photos showing the state of the rental unit, verified when the landlord made a visit to the tenant's unit when checking on a flood to the rental unit below. The issues stemming from the tenant's rental unit cause issues of safety and risk to other residents in the building. Additionally, the landlord spoke to the issue of utility service workers not entering the unit to perform needed work because of the state of the rental unit.

Specifically, details in the landlord's testimony and evidence are:

- they made a request to the tenant to clean up the rental unit on October 15, this when visiting to check on a water leak

- photos show extreme clutter within the rental unit making floor space impassable – photos also show the bathroom in a state of uncleanness, with water remaining in the bathtub with several items floating
- photos show evidence of drug use which causes the utility service workers concern
- on October 29, the landlord made another visit to see whether the tenant obliged with the request to clean up – they observed wires out to the hallway, sourcing power from an outlet in that common area space
- there is an older type of fuse box in the rental unit – to maximize its output, the tenant used a standard light bulb and foil in the fuse sockets, thereby enabling full power to the plug outlets in the rental unit
- an electrician must repair each outlet in the rental unit; however, they will not enter the rental unit because of its state
- at some point earlier the tenant changed the lock to the rental unit without permission
- warnings to the tenant about the state of the rental unit go back to 2018 – these concern the same issues as well as the lock change
- the landlord's final written warning was on October 19 – for good measure, they delivered this to the tenant by registered mail, and also posted the document on the door of the rental unit.

From the time of the last written warning through to their Application and this hearing, the landlord had no communication with the tenant regarding these issues. The issues remain unresolved from the landlord's perspective.

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:

- (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 is two criteria in s. 56(2). First, the landlord must prove the cause for issuing the Notice. Second, 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:

- (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 landlord concerning the conduct of the tenant and the state of the rental unit.

I have considered the evidence and testimony of the landlord concerning the situation here. I find there is sufficient evidence to show the tenant is a source of legitimate concern of significant risk to the property, as well as the safety of other building occupants. This is set out in s. 56(2)(a). In particular, the tenant is putting the landlord's property at significant risk in their unit, with the combination of fire risk emanating from the fuse box, combined with the extreme clutter present in the landlord's photo evidence. In order to maintain electrical function within the unit, important repairs are needed, and the service is not possible due to the extreme state of things in the rental unit.

Additionally, there is a risk of flooding and/or further water damage which constitutes damage to the property. From the photos, I am satisfied this emanated from the rental unit here.

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. I find what the landlord presents merits 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 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.

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: November 23, 2021

Residential Tenancy Branch