



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Southview Property Management
Inc and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the landlord seeking an Order of Possession ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under Section 47 of the *Residential Tenancy Act*, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord attended the hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call.

The landlord's agent testified that each of the tenants were served with the hearing packages, including notice of this hearing and evidence by posting them to the door of the rental unit on November 16, 2021. The landlord's agent was permitted to provide proof of such service after the hearing concluded. I now have a photograph of the 3 sets of documents attached to the door of the rental unit, showing the unit number, as well as 3 Proof of Service documents specifying that testimony with a witness signature. I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Has the landlord established that the landlord should obtain an Order of Possession ending the tenancy earlier than the tenancy would end if notice to end the tenancy were given under Section 47 of the *Act*?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on December 1, 2020 and expires on November 31, 2022 thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$2,900.00 is payable on the 1st day of each month and there are no rental arrears. On November 30, 2020 the landlord collected a security deposit from the tenants in the amount of \$1,450.00 as well as a pet damage deposit at some point during the tenancy in the amount of \$1,450.00. Both deposits are still held in trust by the landlord. The rental unit is a penthouse condominium apartment in a strata complex containing 17 or 18 floors, and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that sometime in mid-March, 2021 flooding from the toilet occurred in the rental unit, described as black water flooding. The tenants won't let the landlord's agents into the rental unit to do the repairs. The landlord's agents have attended several times, but the tenants refuse entry. At one point they said the refusal was due to COVID, and another time a tenant held the door shut. Another time the tenants didn't respond to the landlord's agents knocking on the door. A month ago, the landlord's agent was there with the owner and a tenant physically shoved the landlord's agent out the door.

The tenants don't want the repairs done; they don't want to have to pay to move items out and relocate until repairs are complete, and they will have to. The owner tried to compromise by having items moved from spot to spot, but that was too much trouble. The tenants' items are big and heavy.

The insurance claims will run out eventually, and the landlord is also concerned about possible mold and bacteria from black water under the wood. A copy of an emergency site inspection report has also been provided for this hearing, which indicates that it is the initial first day assessment. It shows that the date of loss was March 19, 2021 and was inspected on March 25, 2021. Several rooms are noted as being affected, as well as 2 other units.

Analysis

A landlord has a responsibility to make repairs and a tenant has a responsibility to allow entry to make such repairs.

The landlord has made the application under Section 56 of the *Residential Tenancy Act*, which states:

56 (1) A landlord may make an application for dispute resolution requesting

(a) an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) an order granting the landlord possession of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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, and

(b) it would be unreasonable, or unfair to the landlord 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I accept the undisputed testimony of the landlord's agent that the tenants refuse entry, which poses severe risk to the property and the landlord. The incident occurred on March 19, 2021 according to the emergency site inspection report, and given this is now November 29, 2021, I also find that it would be unreasonable, or unfair to the landlord or other occupants of the residential property to wait for a notice to end the tenancy under Section 47 to take effect. Therefore, I grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord in that amount and I order that the landlord may keep that sum from the security deposit held in trust or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord may keep that amount from the security deposit held in trust, or may otherwise recover it.

This order is final and binding and may be enforced.

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: November 29, 2021

Residential Tenancy Branch