



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an early termination of a tenancy pursuant to section 56 because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord.

The tenant did not attend this hearing, although I left the connection open throughout this 35 minute teleconference hearing scheduled for 9:30 a.m. 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 landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, accompanied by his property manager. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceedings package by placing it in the tenant's mailbox on October 20, 2021. The landlord's witness, property manager ML, testified she witnessed the landlord place the notice in the tenants mailbox on that date. I deem the tenant sufficiently served with the Notice of Dispute Resolution Proceedings package three days after placing in the mailbox, on October 23rd, pursuant to sections 71(2)(c) and 90 of the *Act*.

This hearing was conducted in the absence of the tenant pursuant to Rule 7.3.

Issue(s) to be Decided

Should the tenancy end early because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the landlord, not all the details are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

A copy of the tenancy agreement was provided as evidence. The tenancy with the upper unit tenant (the subject tenant in this dispute) began on July 1, 2021. Rent was set at \$750.00 per month payable on the first day of each month.

The landlord gave the following undisputed evidence. The rental unit is the upper unit of a house with both an upper and lower unit. The lower unit is currently tenanted by an unrelated tenant who has health related issues and is currently immobile. The landlord testified that he needs to end the tenancy with the upper unit tenant due to a risk to the health, safety or security of the resident occupying the lower unit and the health, safety or security of his property manager and himself.

The lower unit resident requires the assistance of caregivers and homecare workers who come to the property 2 to 3 times a day. The caregivers have been threatened by the occupants residing in the upper unit, none of whom are on the tenancy agreement with the landlord. The property manager testified that she spoke with the homecare workers who told her none of the workers will leave their cars unless accompanied by another worker. This has detrimentally affected the health and well being of the lower unit tenant who requires assistance to cook, clean and attend to personal healthcare. Likewise, the landlord and the property manager have both been personally threatened by the occupants of the upstairs unit.

The landlord testified that since moving into the unit, the upstairs tenant or people invited to live with him in the unit, have caused damage to the unit, including ripping doors off the bedrooms, tearing out carpets in the suite, installing a trapdoor to prevent unwanted guests from accessing the uppermost part of the unit, and disconnecting the fire alarm which is wired to both the upper and lower units. The landlord provided photographs of the rental unit taken between July and August of 2021 which depicts several unkempt rooms, with wet, moldy clothing strewn about and multiple mattresses throughout.

The landlord testified that when he or the property manager go to the rental unit, there are several different people there who tell him they "live" there, paying the tenant rent money. Those occupants threaten the landlord and his property manager when they

attend, and those same occupants have changed the locks to the house to prevent the landlord from accessing it.

On August 27, 2021, the tenant was served with a One Month Notice to End Tenancy for Cause by the landlord when the landlord left the notice in the tenant's mailbox. The landlord testified that the tenant never disputed the notice and that the tenant has not paid any rent since being served with that notice to end tenancy.

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 or a person permitted on the property by 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)

...

Applications to end a tenancy early are for **very serious breaches only** and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

I have carefully considered the landlord's undisputed testimony that the resident in the lower unit requires the daily assistance of care home workers and that their assistance is vital to her health, safety and well-being. I accept the landlord's submission that the occupants of the upper unit, living alongside with the tenant, have seriously jeopardized the lower resident's lawful rights or interests by preventing the care home workers from accessing the lower resident's unit. Moreover, the danger from a fire in the house where fire alarms have been disconnected remains high.

Based on the photographs provided and the undisputed testimony of the landlord, I also find that the occupants of the upper unit have caused extraordinary damage to the residential property and that the property remains at significant risk of being further damaged. I find that the risk to the lower resident's well being and to the residential property requires an immediate rectification. To wait for the one month notice for cause to take effect would be unfair to the landlord and both unreasonable and dangerous for the lower unit resident, given her mobility concerns. For these reasons, I find the landlord has met the burden to prove the tenancy should end early. The landlord is entitled to an order of possession effective two days after service upon the tenant.

I note that the other occupants of the upper unit are not "*tenants*" as defined by section 1 of the *Residential Tenancy Act*. They are considered "*roommates*" as referred to in Residential Tenancy Policy Guideline PG-19 [Assignment and Sublet]. There is no landlord/tenant relationship between them and as such, they have no rights or protections under the *Residential Tenancy Act*.

Conclusion

The Landlord is granted an order of possession effective two days after service on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced by that Court.

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 09, 2021

Residential Tenancy Branch