



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the *Residential Tenancy Act* (the *Act*), seeking:

- An early end to the tenancy pursuant to section 56 of the *Act*; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call at 11:03 AM on November 25, 2021, and was attended by the Landlord S.S., their Spouse R.S., and their Son T.S., all of whom provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord stated that the Notice of Dispute Resolution Proceeding Package for the Expedited Hearing, including a copy of the Application and the Notice of Hearing, and the documentary evidence submitted at the time of the Application, were posted by them to the door of the Tenant's rental unit on November 11, 2021. They also stated that as they live nearby, they noticed that it was taken off the door within a few hours. Branch records indicate that this is the day following the day that the Notice of Dispute Resolution Proceeding Package for the Expedited Hearing became available to them by the Residential Tenancy Branch (the Branch). The Landlord submitted witness and signed proof of service documents and photographs in support of this testimony.

As a result of the above, and in the absence of any evidence to the contrary, I find that the Tenant was served with the above noted documents for the expedited hearing on November 11, 2021, in accordance with the Act and the Rules of Procedure.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. As I am satisfied that the Tenant was properly notified of the hearing and the Application as set out above, and the Landlord attended the hearing on time and ready to proceed, the hearing therefore proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application and confirmed at the hearing.

Preliminary Matters

Preliminary Matter #1

Although the hearing was scheduled to commence at 11:00 AM, my attendance was delayed until 11:03 AM, as my previous hearing ran long. I apologized to the parties for my late attendance and commenced the hearing upon my attendance.

Preliminary Matter #2

Although the Landlord named two tenants as respondents in the Application, S.D. and R.W., the Landlord stated that they received correspondence from R.W. on November 18, 2021, stating that they and their child had vacated the rental unit. As a result, the Landlord withdrew their Application against R.W. and the hearing seeking an early end to the tenancy proceeded against only the tenant S.D., who will be referred to as the Tenant throughout this decision.

Preliminary Matter #3

Rule 10.2 of the Rules of Procedure states that an applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution. Branch records indicate that only some of the documentary evidence before me was submitted on November 5, 2021, which is the date the Landlord filed their Application online. Rule 10 of the Rules of Procedure states that if any time limit in this rule conflicts with the time limit in another rule, the time limit in this rule applies to the expedited hearing.

At the hearing the Landlord stated that they had submitted new and relevant evidence in accordance with rule 3.17 of the Rules of Procedure. At the hearing I advised the parties that I may not be able to consider evidence not submitted at the time of the Application, however, I find that rule 3.17 applies to expedited hearings under rule 10. As a result, I have considered the Landlord's argument that additional documents were served on the Tenant and submitted to the Branch after November 5, 2021, as they are new and relevant.

Having reviewed the Landlord's testimony and the late documentary evidence, I find that the following documents do not meet the criteria of new and relevant evidence because the evidence is not relevant to the application of section 56 of the *Act*, and/or the evidence existed at the time of the Application or could reasonably have been obtained and submitted at the time of the hearing through the exercise of reasonable due diligence on the part of the Landlord:

- A warning letter dated June 27, 2021;
- A 10 Day Notice to End Tenancy for Unpaid Rent for Utilities (10 Day Notice) for November 2021, signed and dated November 2, 2021;
- The proof of service documents related to the 10 Day Notice;
- A text dated November 5, 2021, regarding the 10 Day Notice;
- A video related to service of the 10 Day Notice;
- The copy of complete evidence package submitted November 23, 2021, containing a cover sheet dated November 16, 2021;
- The proof of service document relating to a different file;
- Numerous videos taken on or before November 5, 2021, and videos without any indication as to the date they were recorded, where duplicate copies were not also submitted at the time of the Application;
- A digital evidence details form;

I do however accept the proof of service documentation associated with the service of the Notice of Dispute Resolution Proceeding Package and evidence served on the Tenant on November 11, 2021, as this documentation could not have been submitted until after the Application was filed. I also accept for consideration any documentary evidence in the indexed and numbered evidence packages that are duplicate copies of evidence I find was submitted with the Application on November 5, 2021. Finally, I accept a letter from the municipality in which the rental unit was located, dated November 8, 2021, regarding the operation of a business at the rental unit by the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?

Is the Landlord entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed and dated by the parties on May 6, 2020, states that the periodic tenancy (month to month) commenced on June 1, 2020, that rent in the amount of \$2,600.00 is due on the first day of each month, and that a \$1,300.00 security deposit was required. At the hearing the Landlord confirmed that these terms are correct and that the full amount of the security deposit is still held by them in trust.

Term 1 of an addendum to the tenancy agreement (the addendum) states that smoking of any nature is strictly prohibited inside the house and on the entire premises, including the garage. Term 6 of the addendum prohibits home businesses without the Landlord's consent. Finally term 18 prohibits any form of open fire, except a CSA certified BBQ.

The Landlord and the parties present with them stated that the Tenant is running a welding business out of the garage of the rental unit which breaches term 6 of the tenancy agreement and voids their home insurance. A copy of the home insurance policy, a copy of the Tenant's business license, a copy of a letter from the Municipality in which the rental unit is located to the Tenant advising them to cease business operations at the rental unit address, and numerous photographs and videos of the Tenant were submitted in support of this testimony. Further to this, the Landlord stated that there is a very real and significant safety risk to the Tenant, other occupants of the

property, and the property itself as a result of the Tenant's welding and smoking activity, as sparks are often seen flying into the low wooden rafters of the garage, due to the storage of accelerants and welding materials, and the fact that the Tenant has been witnessed both smoking and welding near an oil spill in the garage. The Landlord pointed to several photographs and videos in support of their position that the Tenant is engaging in activity at the property that is contrary to the tenancy agreement and presents a significant fire safety risk. As a result, the Landlord sought to end the tenancy pursuant to section 56(2)(a)(ii) and (iii).

The Landlord argued that it would be unreasonable or unfair to wait for a notice to end tenancy under section 47 of the *Act* to take effect, given the real and significant fire safety risk presented by the Tenant's behaviour and the fact that the Landlord's property is currently without insurance due to the Tenant's running of a business out of the property contrary to the requirements of the tenancy agreement and the municipal bylaws.

The Landlord also sought authorization to withhold \$100.00 from the Tenant's security deposit for recovery of the filing fee.

No one attended the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

Section 56 of the *Act* states the following with regards to ending a tenancy early:

Application for order ending tenancy early

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 the 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.

(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.

Based on the compelling and uncontested documentary evidence and affirmed testimony before me for consideration, I am satisfied on a balance of probabilities that a tenancy to which the *Act* applies exists, that the Landlord has cause to end the tenancy early pursuant to section 56 of the *Act* because the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, and has put the Landlord's property at significant risk. The Landlord submitted a copy of a business license and a letter from the municipality in which the rental unit is located that I am satisfied show that the Tenant operates a home based sheet metal business out of the rental unit, contrary to both the tenancy agreement and the municipal bylaws. The copy of the insurance policy submitted by the Landlord and their affirmed and uncontested testimony also satisfies me on a balance of probabilities that the Landlord is not covered under their home insurance policy if the building or any part thereof, is used for business purposes. Finally, I am satisfied by the Landlord's affirmed and undisputed testimony, and the numerous photographs and videos before me for

consideration that the Tenant's behavior presents a real and significant fire safety risk to the property as they can be seen welding in the garage, an area I am not satisfied is set up or intended for this type of activity, smoking and welding near what appear to be oil spill(s) in the garage, and storing and using various welding materials, including what appear to be large gas tanks/cylinders, in the garage. I am also mindful that neither the Tenant nor an agent acting on their behalf attended the hearing to argue that the Tenancy should not end early pursuant to section 56 of the *Act*.

I am also satisfied that, under the circumstances, it would be unreasonable or unfair to the Landlord and the other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect, due to the significant fire risk and the Landlord's lack of insurance coverage for the property due to the Tenant's unauthorized business

Based on the above and pursuant to section 56 of the *Act*, the Landlord is entitled to an Order of possession effective two days after service of the order on the Tenant. Pursuant to section 72 of the *Act*, the Landlord is also entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee. The balance of the security deposit must be dealt with in accordance with the *Act*.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court. The tenant is cautioned that costs of such enforcement are recoverable from them by the Landlord. Pursuant to section 72 of the *Act*, the Landlord is also entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee.

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 26, 2021

Residential Tenancy Branch