



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 the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an early end to the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing. Landlord HT attended the hearing. Both landlords were represented by counsel ("**RV**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

RV stated, and the tenant confirmed, that the landlords served the tenant with the notice of dispute resolution form and supporting evidence package. The tenant testified, and the landlords confirmed, that the tenant served the landlord with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

The tenant stated that he was unable to upload one of the documents he served on the landlord to the Residential Tenancy Branch (the "**RTB**") online evidence submission site. He identified the missing document, and RV confirmed that he was in possession of the document. As such, I permitted the tenant to upload the document to the RTB after the hearing. I have reviewed this document before writing this decision.

Preliminary Issue – Nature of Application

At the outset of the hearing, as is my practice, I confirmed with each party that they understood the issues that would be addressed at this hearing (that is, whether the landlords are entitled to end the tenancy early and is entitled to recover the filing fee). The tenant confirmed his understanding. RV stated that he understood that the validity of the landlord's two month notice to end tenancy for landlord's use of the rental unit (the "**Two Month Notice**") would also be addressed. I advised him that this would not be the case, and that I understood the Two Month Notice was the subject of another hearing brought by the tenant to cancel the Two Month Notice scheduled to occur on January 13, 2022 (file number on cover of this decision).

After brief questioning, I came to understand that RV understood today's hearing, which was brought on an expedited basis per RTB Rule of Procedure 10, to be a hearing as to whether an application on the validity of the Two Month Notice could be heard on an expedited basis. This is not the correct application of Rule 10. Instead, rather than acting as a way to "fast-track" any type of application, Rule 10 applies to all applications brought on three narrow grounds: an early end to tenancy per section 56 of the Act, a tenant's order of possession per section 54 of the Act, and an order that the landlord make emergency repairs per section 33 of the Act. All applications made pursuant to these sections are heard on an expedited basis; the type of claim justifies the expeditiousness.

As such, I advised RV that this hearing would deal with an application to end the tenancy pursuant to section 56 of the Act rather than ending the tenancy pursuant to the Two Month Notice. I note that, in the landlords' application, they addressed the factors set out in section 56, but did so as the basis for awarding an expedited hearing, rather than as a basis for an entitlement for ending the tenancy early.

Issues to be Decided

Are the landlords entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting August 15, 2019 and ending August 14, 2020. The parties renewed this agreement for a further one year term starting July 26, 2020 and ending July 26, 2021. The renewal included an addendum which prohibits the tenant from renting out the rental unit on short-term rental sites such as AirBnB. The rental unit is a basement suite in a single-detached home. The landlords live on the upper level. Monthly rent is \$1,800 and is payable on the first of each month. The tenant paid the landlords a security deposit of \$900, which the landlords continue to hold in trust for the tenants.

RV stated that, in contravention of the addendum, since entering into the renewed tenancy agreement, the tenant has rented, or attempted to rent, the rental unit out on a short-term basis on four separate occasions:

- In October 2020, when he advised the landlord he would sublet the rental unit to two people;

- In November 2020, when he advised the landlord he would be renting the unit to someone else from November 2020 to January 2021 while he was away;
- From the end of June to mid-July 2021, when the tenant hosted five individuals at the rental; and
- For the last week of July 2021, when the tenant allowed five people to stay in the rental unit while he was absent from it. These individuals used the landlords' kayak (which the landlords allege they damaged), paddleboards, and life vests. The landlords allege these individuals may have damaged the footings of a pier owned by the landlords.

RV stated that the tenant never reached sought or obtained the approval of the landlord for any of these rentals or attempted rentals.

Additionally, the landlords say that the tenant has advertised the rental unit for a roommate for September 1 to October 31, 2021. They submitted a copy of this advertisement into evidence.

The tenant stated that in late 2020 he was not attempting to sub-let the rental unit or rent it out on a short-term basis. Rather, he stated he was looking to take in a roommate to defray the cost of rent. He argued that since he was renting a two-bedroom unit, he was entitled to have a roommate.

Additionally, the tenant stated that the individuals who came over during the summer of 2021 were close family members and friends. He testified that he did not rent the rental unit to them or charge them for staying. Additionally, he testified that he did not let these guests stay unsupervised or without him. He testified that he stayed at the rental unit while they were visiting but conceded that he did go to work and left them at the rental unit. He stated that the paddleboards they used were his own but conceded that they did use the landlords' life jacket. He denied that they caused any damage to the landlords' property. I note that the landlords did not submit any documentary evidence to support their claim that the tenant's guests damaged their property.

The tenant testified that, after he entered into the renewed tenancy agreement, with one exception in August 2020 for which he obtained approval from landlord AD, he did not rent the rental unit out on AirBnB or any other short-term rental service. He submitted revenue statements from Air BnB for 2020 and 2021 into evidence. These show that he generated \$834 in revenue in 2020 from a single four-night stay in August 2020, and no revenue in 2021.

I asked HT how she came to the conclusion that the visitors in the summer of 2021 were short-term renters. HT admitted that based on the past conduct of the tenant (that is, that he rented the rental unit on AirBnB in 2019), she assumed that they were renters. She testified that she did not ask them if they were short-term renters, and that they did not hold themselves out as renters either.

The tenant stated that, at the start of the tenancy, the landlords and him had an agreement to rent the rental unit out on AirBnB when he was away (the tenant is a member of the Canadian Armed Forces and is often deployed away from British Columbia). The landlords would manage and administer the rentals through their own AirBnB account, and the tenant and landlords would share the proceeds. However, this arrangement fell apart for reasons unrelated to this application.

After the arrangement fell apart, but before the parties renewed the tenancy agreement (which included the addendum prohibiting short-term rentals), the tenant and his then-roommate set up an AirBnB account to list the rental unit. They rented it out once in 2019, after which deciding to stop renting on AirBnB due to a poor experience.

The tenant and his then-roommate deactivated the rental unit from the site. However, for reasons unknown to them, the listing reactivated in August 2020, and someone made a reservation. At this point, the roommate had moved out of the rental unit, but remained the primary contact for the AirBnB account. The tenant asked the landlords if he could honor the reservation, and they consented.

The tenant included a statement from his former roommate in the evidence package, in which she wrote:

On October 12, 2021, I received a text message stating, "Hey I am a contractor with 2 other guys with me looking for a place to stay I saw your number on air bnb, does the couch pull out into a bed?" I immediately took a screen shot and sent it to [the tenant] to deal with the situation. My text message said, "Hey [tenant], [former roommate] here. I just received this message about an Air BnB. Is this for you? And then I proceeded to say, "I thought my phone number was off the site?" [the tenant] replied, "I know it is still an issue. It went back online without me doing anything. Can you close the account forever? Delete it?"

On October 16, 2021, I received a phone call from [phone number redacted] regarding the Air BnB. They mentioned that they booked the space and were on their way to [city redacted] to check in. They called to confirm that the booking was successful. Once again, I was shocked by this phone call, told the client I had no idea about the booking, and that I no longer live at the residence. The unexpected client mentioned that he felt nervous from my response. Once again, I took a screen shot and passed the information on to [the tenant] via text message. I asked [the tenant] to contact this phone number as they were unsure what was happening next.

On October 17, 2021, I heard back from [the tenant] via text mentioning that the client canceled the booking. [The tenant] and I were both surprised by this unexpected booking.

The landlords provided screenshots from AirBnB made on October 14, 2021, which show that they were able to make a booking to rent the rental unit from November 6 to 12, 2021. They did not make this booking.

The landlords argue that this demonstrates the tenant's intent to continue to rent the rental unit out on a short-term basis, in violation of the tenancy agreement.

RV argued that such a course of action would put the landlords' property at significant risk. In his written submissions, he wrote:

Occupants who are not properly instructed on the facilities available in a rental unit pose unpredictable risks. They are unfamiliar with the house, lands and how they are serviced. They are more likely to experience injuries on the property, may not realize when something is not working correctly, and are unlikely to know how to mitigate damage or contact the actual landlord in case of emergency.

Such occupants are also unpredictable and may put the entire property and neighboring properties at significant risk. It is common knowledge and regularly reported in media the issues short-term tenants have caused for landlords and neighboring property owners

Short-term occupants may cause a fire, use illegal substances or conduct illegal business or may not use the facilities correctly causing severe risk to other occupants. None of these are reasonable or acceptable risks for a landlord to bear unless the landlord purposefully and intentionally consented to renting a rental unit on a short-term basis.

The landlords did not allege that any of the tenant's short-term renters caused any such damage (beyond the alleged damage to the kayak and pier, which the tenant denied, and in any event, states would have been caused his guests and not short-term renters).

RV also argued that the tenant's renting out the rental unit on AirBnB amounts to a significant risk to the landlords' property, as it could cause them to be in breach of their mortgage, which could, in turn, cause the lender to demand repayment and, if repayment was not forthcoming, force the sale of the residential property.

The landlords did not submit a copy of their insurance policy or their mortgage agreement into evidence. I cannot say what the specific terms of these agreements might be. RV asked that I take judicial notice of such terms, as he asserted that they are standard clauses. I am not prepared to take such notice. Arbitrators of the RTB are not experts in insurance or lending law. Their purview is the Residential Tenancy Act. I do not have independent knowledge as to what the standard terms of a mortgage might be. Additionally, in the absence of a copy of the landlords' insurance policy, I cannot say

whether their policy covers damage caused by short term renters. The only documentary evidence provided by the landlords in this respect is an excerpt from a cover sheet of their insurance policy, which states:

To avoid jeopardizing your coverage, please advise if:

[...]

(b) your dwelling, or any portion of it, is being rented out

The tenant argued that, without any proof of the specific terms of these agreements, the landlords' argument on this point must fail.

Analysis

Section 56(2) of the Act addresses early ends to tenancy. It states:

(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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlords bear the evidentiary burden to prove both that it is more likely than not that the tenant acted in such a way to satisfy one of the conditions set out at section 56(2)(a) of the Act and that it would be unreasonable or unfair to the landlords to have to wait to end the tenancy pursuant to section 47 of the Act (that is, by issuing a notice to end tenancy for cause).

RTB Policy Guideline 51 discusses applications to end a tenancy early. It states:

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).

Without sufficient evidence the arbitrator will dismiss the application.

Based on the parties' testimony, and the evidence submitted to the RTB, I find that the landlords' have failed to demonstrate that it would be unfair or unreasonable to them to wait for a notice to end the tenancy under section 47 to take effect, as required by section 56(2)(b). As such, it is unnecessary for me to consider whether the actions of the tenant satisfy any of the factors set out at section 56(2)(a) of the Act.

I explicitly make no finding as to whether the tenant has rented the rental unit out on a short-term basis. It is not necessary for me to make such a finding as, even if this were true, the landlord has failed to demonstrate how this breach has caused them any damage or how it has put their property at significant risk so as to make it unfair for them to wait to end the tenancy by way of section 47 of the Act.

The physical damaged alleged by the landlords is relatively minor, and there is no suggestion that the damage is ongoing or is exacerbated by the tenant's current activities. The landlords have not alleged that the tenant has any short-term renters in the rental unit since July 2021. While I accept the rental unit may be available for rent on AirBnB currently, I accept the evidence of the tenant's former roommate that the one booking that was made was cancelled. Such facts suggest that the threat of an ongoing risk to the landlords' property is minimal.

Additionally, the landlords have not submitted any documentary evidence that supports their assertion that the renting out of the rental unit on a short-term basis causes poses any immediate risk to them by causing them to be in breach of their mortgage agreement. As noted above, I have neither the mortgage agreement nor the insurance policy (the language of specific terms contained in each being essential to determining if the tenant's actions are at risk of putting them in breach of the mortgage). I have no correspondence in evidence from either the mortgagor or the insurer which notifies the landlord that they are in breach of either agreement or of any possible consequence the landlords might suffer should the landlords breach the mortgage agreement or allow the rental unit to be rented on a short-term basis.

Indeed, there is no documentary evidence before me that even shows that the residential property is *not* insured for short-term renters.

Policy Guideline 51 states that landlords need to provide "sufficient supporting evidence" to support their application. The landlords have failed to do this. I have insufficient supporting evidence more me to conclude that there is any unusual urgency to this situation or to conclude that it would be unfair for the landlord to wait for a notice issued pursuant to section 47 of the Act to take effect.

As such, the landlords' application to end the tenancy early fails.

Conclusion

I dismiss the landlords' application, in its entirety, without leave to reapply.

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: December 2, 2021

Residential Tenancy Branch