



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlords apply for the early termination of a tenancy pursuant to s. 56 of the *Residential Tenancy Act* (the “*Act*”). The Landlords also seek return of their filing fee pursuant to s. 72.

A.J. and L.J. appeared on their own behalf as Landlords. A.D., a tenant within the residential property, appeared as witness for the Landlords.

The Tenant did not appear, nor did someone appear on his behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled as set out in the Notice of Dispute Resolution. As the Tenant failed to attend, the hearing was conducted in the absence of the Tenant pursuant to Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlords advised that the Notice of Dispute Resolution was served on the Tenant by way of registered mail sent on December 15, 2021. The Landlords provide a tracking receipt of the registered mail package and say that the package included their evidence. I find that the Notice of Dispute Resolution and Landlords’ evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant received the Landlords’ application materials on December 20, 2021.

The Tenant uploaded responding evidence to the Residential Tenancy Branch. The Landlords deny receiving any evidence from the Tenant. The Tenant was not present and therefore could not demonstrate service of his responding evidence as

contemplated by Rule 10.9 of the Rules of Procedure. As the Tenant's evidence was not served on the Landlords, I do not include it into the record and have not considered it in making this decision.

Issue(s) to be Decided

- 1) Should the tenancy be ended early without issuing a notice to end tenancy?
- 2) Is the Landlord entitled to return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision. As mentioned above, the Tenant's evidence sent to the Residential Tenancy Branch is excluded as it was not served on the Landlords.

The Landlords advise that the tenancy began on or about June 20, 2020. The Tenant rented a single room within the residential property and paid \$650.00 on the first day of each month in rent. It appears the Tenant began to rent an additional room beginning in September 2021 for storage and was to pay an additional \$650.00 in rent, making total rent at \$1,300.00. No written tenancy agreement was submitted into evidence by the Landlords.

The residential property appears to be a single detached home in which the Landlords rent out the rooms individually to tenants. There are currently two other tenants at the property, A.D. and C.J..

The Landlords say there have been numerous issues respecting the Tenant since he has moved to the residential property. They say that the Tenant has permitted his girlfriend, an A.C., to reside at the residential property without their permission or consent.

A.D., a tenant at the property, was called as a witness. He also provided a written statement that was put into evidence by the Landlords. A.D. indicates that the Tenant has been producing drugs at the residential property, in a workshop at the residential property. A.D. advised that it was his understanding that the Tenant was making crack cocaine and/or fentanyl.

L.J. indicated that she and A.J., who both primarily reside elsewhere, had a room they stayed in at the residential property. She says that when visiting the property on September 4, 2021 she found drug paraphernalia in the bathroom nearest to the Tenant's bedroom. The items included foil with burn marks. On that same evening, when going downstairs she stepped on a bag that she says contained drugs. The Landlords say they turned the bag over to the police, who told them that the bag contained either crack or fentanyl.

An incident occurred on October 28, 2021 where a rock was thrown through a main floor window. The Landlords say the police apprehended the vandal, C.G., who told the police that he threw the rock breaking the residential property due to a dispute between he and the Tenant. A.D. confirms that the incident occurred.

The Landlords say that the police attended the residential property on November 7, 2021 at 1:30 AM searching for the Tenant and A.C.. It does not appear that either were at the residential property at the time. The police broke down a door when attending the property. A.D. confirmed this incident occurred. The Landlords' understanding is that the police received a complaint that the Tenant and A.C. were in the midst of a domestic dispute.

A.D. further stated that the Tenant keeps several firearms at the residential property, including 2 automatic shotguns, 2 handguns, and an automatic assault-style rifle. A.D. says that he knows the Tenant cannot possess firearms due to previous issues with law enforcement and says that he does not have legal authority to possess restricted firearms.

A.D. further stated that he suspects the Tenant has stolen his personal belongings. In his telling, A.D. locks the door to his room when he leaves and returns to find items missing from his room that has been unlocked. The Tenant apparently has the key to A.D.'s room.

The Landlords and A.D. confirm that the Tenant and his girlfriend A.C. both consume illicit substances. A.D. testified to an incident that occurred recently in which he found a pot of food was left unattended on the stove and had been burning. A.D. called to either the Tenant or A.C.. A.C. came out and told him that she had fallen asleep. A.D. says that similar incidents with respect to unattended food on the stove have previously occurred.

The Landlords say that they have lost three tenants as a direct result of the Tenant. They say that C.J. is currently afraid to be in the house following the incident in which a rock was thrown through the window. The Landlords further state that the Tenant is a familial relation and that the complained of behaviour has been longstanding. They say they have been reluctant to take action to evict the Tenant due to the familial aspect of this dispute but have resolved to end the tenancy due to recent events.

Analysis

The Landlords seek an early end to the tenancy as well as return of their filing fee. A landlord may end a tenancy early under s. 56 of the Act where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between these sections of the act is that under s. 56 no notice is given to end the tenancy on the basis that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline 51 sets out, at page 4, that applications to end a tenancy early under s. 56 are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

As a preliminary matter, I find that I have jurisdiction to determine this dispute. The Landlords admit to having a room at the residential property when they are visiting the community. However, I accept that this is purely based on convenience and that Landlords primary residence is in another community. I find that incidental use of the

residential property by the Landlords does not trigger s. 4 of the *Act* and that I have jurisdiction to determine this dispute.

I am satisfied that the Landlords have demonstrated that an early termination of the residential property is warranted under the present circumstances. I am persuaded by A.D.'s evidence and find that the Tenant is producing illegal narcotics at the residential property. I find that the illegal production of narcotics is likely to adversely affect the quiet enjoyment, safety, security, or physical well-being of the other tenants at the residential property.

I accept the Landlords evidence that they discovered fentanyl at the residential property. The possession of fentanyl is illegal, and I note that incidental exposure to fentanyl poses a health risk to the other residents at the residential property. I accept that the Tenant and/or A.C., the occupant the Tenant permits on the property, left fentanyl and other drug paraphernalia in the common areas of the residential property in which it could have come into contact with the other tenants.

Further, I accept A.D.'s evidence that he discovered unattended food on the stove at the residential property and that this has occurred on numerous occasions. Leaving food to cook unattended to the point that it burns poses a very real fire risk to the residential property. I find that A.C., the occupant permitted to be at the residential property by the Tenant, did leave food unattended on the stove and that this failure poses a risk to the Landlords' property and the safety of other occupants of the residential property.

Finally, I accept A.D.'s evidence that the Tenant possesses several firearms as described that are stored at the residential property. Though possession of firearms is not, in itself, illegal, I accept A.D.'s evidence that the Tenant is prohibited from possessing any firearms at all. I find that the illegal possession of firearms, in particular two handguns and an assault-style automatic rifle, poses a risk to the health, safety, and security of the other occupants of the residential property.

I further find it would be unreasonable to the other occupants to wait for a one-month notice to end tenancy to take effect under the circumstances. In particular, the illegal use of illegal narcotics, in particular the fentanyl, poses a significant health risk to the other occupants at the residential property due to the risk of incidental exposure. The Tenant has permitted fentanyl to be stored in common areas within the residential property accessible to others. There is also the continued risk of fire caused by leaving food to cook unattended. There is likely a fire risk related to the illegal production of

narcotics at the residential property. The continued fire risks, the illegal possession of firearms, and the illegal possession of fentanyl in the common areas of the residential property make it unreasonable to wait for a one-month notice to end tenancy to take effect.

Accordingly, I find that the Landlords have made out their claim and that the early termination of the tenancy is warranted under the circumstances. They shall have their order for possession.

Conclusion

The Landlords have established their claim under s. 56 of the *Act* and are entitled to an order for possession. The Tenant and any occupants they permit at the residential property shall provide vacant possession of the rental unit within **two (2) days** of receiving this order.

The Landlords were successful in their application. As such, they are entitled to the return of their filing fee. Pursuant to s. 72 of the *Act*, I order that the Tenant pay **\$100.00** to the Landlords for their filing fee.

It is the Landlords' obligation to serve these orders on the Tenant.

If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlords with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order for possession, it may be filed by the Landlords with the Supreme Court of British Columbia and enforced as an order of 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: January 11, 2022

Residential Tenancy Branch