



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1150741 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

The landlord seeks orders under section 56 of the *Residential Tenancy Act* ("Act") to end the tenancy. In addition, they seek recovery of the application filing fee.

A representative for the numbered company landlord and the tenant attended the hearing on February 14, 2022. Both parties were affirmed under oath.

Preliminary Issue: Service of Evidence

It is noted that the landlord testified that they served both the Notice of Dispute Resolution Proceeding and their documentary evidence on the tenant. The tenant acknowledged receiving the Notice of Dispute Resolution Proceeding but remarked that they had not received any documentary evidence. I note that the landlord's proof of service document references the Notice of Dispute Resolution Proceeding and instruction sheet being served, but there is no reference to any documentary evidence being served.

Rule 3.5 of the Residential Tenancy Branch's *Rules of Procedure* states that an "applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure."

Based on the contradictory positions of the parties, and, taking into consideration that there is no supporting evidence that the landlord served their documentary and video evidence on the tenant, I am not satisfied pursuant to Rule 3.5 that the respondent tenant was served with the landlord's evidence. For this reason, the landlord's documentary (photographic, documents, and video) evidence is not admitted and will not be considered. Only the oral evidence – that is, the testimony – of the landlord shall be admissible and considered.

Issue

Is the landlord entitled to orders under section 56 of the Act?

Background and Evidence

The tenancy began on July 1, 2020. Monthly rent is \$750.00. The tenant paid a \$330.00 security deposit. There is a written tenancy agreement in evidence.

In their application the landlord provided the following written submission as to why the orders are being sought under section 56 of the Act:

The tenant, [name redacted], since being served with eviction notices is deliberately destroying the rental unit. She has refused to leave and is claiming she will have to be forcibly removed and in the meantime damaging the unit. She smashed a window, has kicked in the main door to unit and wrecked the door as well as the frame and also light a fire on the balcony. Multiple calls to the RCMP and surveillance footage to confirm the actions.

The landlord's representative essentially reiterated this statement of facts during her testimony. The tenant is "slowly destroying the building," is engaged in deliberate vandalism, and trying to remove other doors in the 28-rental-unit building.

The representative also testified that multiple 10 Day Notices to End Tenancy for Unpaid Rent have been issued, that the tenant is behind on her rent, and that despite the tenant having signed a mutual agreement to end the tenancy she has so far not moved out.

The tenant testified that while she has been issued many notices to end tenancy for unpaid, she nevertheless pays the rent. She is apologetic for the rent always being late. However, the tenant countered the remainder of the landlord's testimony.

She denied that she is destroying the building and that the issue regarding the door is that it somehow got locked when she went out to let some friends into the building. (The tenant testified that the building does not have an intercom, so if a friend wants to be let in, they have to yell at the tenant from outside. She then has to go and let them in.) In any event, the tenant and her friends were not trying to destroy the door, but rather, were trying to get back into the rental unit.

Regarding the smashed window or windows, the tenant testified that the occupant living on the floor above her threw a snowball down. The snowball smashed the window.

Last, in respect of the fire, the tenant testified that it was started by her friend, one Mr. J.B. This individual was lighting fires around the municipality and ended up lighting a small fire on the tenant's balcony. The tenant only discovered the fire a few weeks ago. However, the fire, which was confined to a small area on a carpet that was on the balcony, did not require any fire trucks to come out. Finally, the tenant testified that she believes her name is being slandered in regard to the various issues raised.

In a brief rebuttal, the landlord submitted that if the tenant was trying to get back into the rental unit, they ought to have contacted the on-site property manager instead of trying to pry the door open. There is, she added, no excuse or explanation for this.

Analysis

[Section 56\(1\)](#) of the Act permits a landlord to make an application for dispute resolution to request (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 (a "One Month Notice to End Tenancy for Cause"), and (b) an order granting the landlord possession of the rental unit. For me to grant this relief, the landlord must prove on a balance of probabilities that:

- (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.

In this case, there is no evidence for me to find that the tenant caused the fire on the balcony (or that the fire was in any way significant), that the tenant has put the property at significant risk, or that the tenant has caused extraordinary damage to the property. In regard to the door being pried open, while this conduct is inexcusable, there is no evidence before me to find that the damage was extraordinary.

In summary, taking into consideration all the oral evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving its case for orders under section 56 of the Act. For this reason, the application is dismissed, without leave to reapply.

There are other issues with this tenancy, of course, such as repeated late rent and a mutual agreement to end the tenancy which has been ignored by the tenant. However, the landlord is at liberty to apply for orders of possession based on any undisputed 10 Day Notice to End Tenancy for Unpaid Rent ([section 55 of the Act](#)) and/or based on the mutual agreement to end tenancy.

Conclusion

The application is dismissed.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: February 14, 2022

Residential Tenancy Branch