



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord applies for an early termination of a tenancy pursuant to s. 56 of the *Residential Tenancy Act* (the “*Act*”). The Landlord also seeks return of their filing fee pursuant to s. 72.

R.T. appeared on her own behalf as Landlord. B.F. appeared with the Landlord. The Tenant did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant failed to attend, the hearing was conducted without his submissions as provided for by Rule 7.3 of the Rules of Procedure.

The Landlord indicates that they served the Notice of Dispute Resolution and their initial evidence on the Tenant on January 12, 2022 by posting it to the Tenant’s door. Additional evidence was served on January 30, 2022, which was again posted to the Tenants door. I find that the Notice of Dispute Resolution and the Landlord’s evidence was served in accordance with s. 89 of the *Act*. I further find that inclusion of the additional evidence is not prejudicial to the Tenant, who had ample opportunity to provide response evidence in compliance with the time limits imposed under Rule 10.5 of the Rules of Procedure.

Issue(s) to be Decided

- 1) Should the tenancy end early and without 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.

The Landlord confirmed that the Tenant moved into the rental unit on July 30, 2021, that rent of \$950.00 is due on the 30th day of each month, and that \$50.00 is also due for utilities on the 30th day of each month. The Landlord confirmed holding a security deposit of \$500.00 in trust for the Tenant. A written copy of the tenancy agreement was put into evidence.

The rental unit is a single room within a residential property. The Landlord rents the rooms out to individual tenants.

The Landlord indicates that the Tenant has caused significant disruptions with the other occupants of the residential property. The Landlord says that three tenants have moved out of the residential property directly because of the Tenants conduct.

The Landlord says that on November 7, 2021 the Tenant physically assaulted another tenant.

In an email dated November 9, 2021, another occupant, H.A., details her recollection of the incident on November 7, 2021. H.A. says that the other tenant asked the Tenant for her EarPods and for some money that the Tenant owed her. H.A. says that the Tenant refused and pushed the other tenant to the ground. H.A. says she called the police.

In the same email, H.A. says that she would be vacating the residential property due to concern for her own safety. The email further states that the Tenant harassed her and that she filed a claim with the BC Human Rights Tribunal in September 2021.

The Landlord provides a One-Month Notice to End Tenancy dated November 2, 2021, which was issued on the basis that the Tenant significantly interfered with or unreasonably disturbed another occupant. The One-Month Notice is not in issue in the present application. However, the Landlord says that the Tenant told her that he would be moving out pursuant to the notice. The Tenant is said to have reneged on the agreement to vacate and continued to occupy the rental unit. The Landlord says that

they had arranged for another tenant to take occupancy of the Tenant's rental unit, which had to be undone due to the Tenant's continued occupation of the rental unit.

The Landlord provides copies of text messages dated December 28, 2021 from a K., another occupant at the residential property. The message indicates the Tenant intimidated them after they asked the Tenant to use his own bathroom. K. says that they fear for their safety given that the Tenant has attacked others at the residential property. K. concludes the text message by saying they would be moving out of their rental unit due to concerns for their safety.

The Landlord says that she no longer attends the residential property and has her brother, R.T., attend in her stead. The Landlord says that she is afraid of the Tenant as he confronts her, argues with her, and is physically intimidating.

A statement dated January 1, 2022 from R.T. indicates that he attended the residential property on that date. R.T. is said to have been speaking with another tenant when the Tenant began to argue and accost him. R.T. left the room and went elsewhere in the residential property. R.T. says that the Tenant stole his tools when he left the room and confronted the Tenant about this after discovering they were gone. R.T. says the Tenant denied it and is said to have told R.T. that "one day, I will see you outside." R.T., upon hearing the threat, locked himself inside a bathroom and called the police.

The Landlord filed their present application on January 3, 2021.

The Landlord's additional evidence includes a text message, which the Landlord says she received from the Tenant on January 16, 2022. The text message says that the Tenant would be leaving on Friday, which the Landlord confirmed was January 21, 2022. The Landlord came into possession of the Tenant's flight itinerary showing an international destination and that the Tenant would be leaving on January 21, 2022.

The Landlord went to the residential property on January 21, 2022 to discover that the Tenant's rental unit was abandoned. Photographs of the rental unit on that date were put into evidence by the Landlord. The Landlord changed the locks. After the Landlord left, the Tenant entered the residential property and re-occupied his room. The Landlord suspects that the Tenant did not leave on January 21, 2022 because he was not permitted to fly for want of a negative COVID-19 PCR test.

The Landlord says the Tenant continues to occupy the rental unit.

Analysis

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*.

A landlord may end a tenancy early under s. 56 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 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.

I pause to note that the Landlord indicates that the Tenant gave notice to vacate the rental unit with their last day being on January 21, 2022. I am unable to make a finding that the Tenant vacated the rental unit on that date as the text message provided does not comply with the formal requirements of s. 52 of the *Act* and the Tenant appears to continue to occupy the rental unit. These would indicate to me that he did not abandon the rental unit and that the tenancy is still active.

I accept the Landlord's evidence with respect to the Tenant's repeated conduct within the residential property. I place significant weight on the incident of November 7, 2021 in which the Tenant attacked another tenant and pushed her to the ground, which was corroborated by two of the other occupants at the residential property. I find that the

Tenant's conduct on November 7, 2021 constitutes assault of the other occupant. The Tenant's conduct has caused the other occupants to understandably fear him. I accept the Landlord's evidence that three of the occupants have left the residential property due to their fear of the Tenant.

I note that the One-Month Notice to End Tenancy dated November 2, 2021 predates the incident of November 7, 2021. I accept that the Landlord did not take action following the November 7, 2021 incident due to the Tenant indicating to her that he would be leaving the rental unit at the end of the month. The Landlord could have sought the enforcement of the One-Month Notice, however, that did not occur. I do not believe that it would be reasonable or fair to the Landlord and the other occupants of the residential property to wait for a new One-Month Notice to take effect.

I find that the Landlord has established that the Tenant's conduct of November 7, 2021 constituted assault, that the incident both significantly interfered with and unreasonably disturbed the other occupants right to quiet enjoyment, that Tenant seriously jeopardized the health and safety of the assaulted tenant in particular, and that it would be unreasonable and unfair to the other occupants and the Landlord to wait for a One-Month Notice. Accordingly, I grant the Landlord an order for possession.

Conclusion

The Landlord has established that the tenancy should be ended early. I grant the Landlord an order for possession pursuant to s. 56 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving this order.

As the Landlord was successful in their application, I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain **\$100.00** from the security deposit they hold in trust from the Tenant in full satisfaction of their filing fee.

It is the Landlord's obligation to serve the order for possession on the Tenant. If the Tenant does not comply with the order for possession, it may be filed by the Landlord 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: February 07, 2022

Residential Tenancy Branch