



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on March 12, 2022 seeking an order to end the tenancy on the basis that the Tenant poses an immediate and severe risk to the property, other occupants or the Landlord. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 28, 2022. In the conference call hearing I explained the process and provided the parties who attended the opportunity to ask questions.

Both the Landlord and the Tenant attended the hearing. I provided both parties the opportunity to present oral testimony and make submissions during the hearing. The Tenant confirmed they received the Landlord’s prepared evidence in advance of the hearing. They did not prepare documentary evidence of their own. On this basis, the hearing proceeded.

Issues to be Decided

Is the Landlord entitled to an order of possession that ends the tenancy for cause and without notice by s. 56 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord applies for an end to this tenancy based on the “immediate and severe risk to the rental property, other occupants, or the Landlord.” This is for a series of incidents that began approximately December 2021, which was the month following the start of this tenancy. In the hearing, the Landlord listed the following incidents, all involving an immediate family member of the Tenant:

- beating with a stick on the doors of other building residents' units;
- trying to replace the door of the boiler room onto its hinges after its removal, observed by another building resident
- trying to break into a locked door in the building
- overheard telling the Tenant they were going to get firearm weapons
- on March 9 punching a hole through the wall into the adjacent unit, yelling into the unit to the residents of that unit
- on March 11, breaking cameras belonging to the security system within the building
- a building staff member's own keys found within the Tenant's unit after reported missing
- a separate visitor, associated with the Tenant's family member, made a threat of physical violence to the building caretaker.

The police visited in answer to resident and/or Landlord calls. The Landlord in the hearing reported that 10 of 21 units reported their fear of the Tenant's family member. The Landlord provided 5 affidavits of building residents reporting on their direct observations of incidents. The Landlord provided files with photos showing the incidents in question, as well as video files showing the Tenant's own family member committing various transgressions in the building. This includes breakage of video equipment, breaking and entering into restricted/locked building areas. The video footage also includes police intervention and detention of the family member in question.

In the hearing, the Landlord added specifically that the Tenant provides access and/or accommodation to that family member. This behaviour and damaging actions have not abated since the start of the tenancy, and by the Landlord's estimation have increased in severity. The Landlord also added it seems that the Tenant is home when these actions occur.

Another family member attended the hearing to assist the Tenant here. They explained they were not aware of any of these infractions and learned about the details from the Landlord's prepared evidence for this hearing. They briefly set out circumstances within the family involving the other family member causing the issues; that individual was not present in this hearing.

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

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 tenancy were given under section 47 [*landlords' notice: cause*], and
- (b) granting the landlords an order of possession in respect of the rental unit.

Following this, s. 56(2) sets out two criteria. First, a landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to that landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

56(2) . . .

- (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 landlords of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlords or another occupant;
 - (iii) put the landlords' property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlords' 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 landlords;
 - (v) caused extraordinary damage to the residential property . . .

I have considered the evidence of the Landlord concerning the conduct of the Tenant's family member, and the incidents in question.

I find there is sufficient evidence to show the Tenant's family member – being “a person permitted on the residential property by the tenant” – was the cause of the incidents in question. This is captured clearly in video that shows destruction of the Landlord's property, illegal activity, and, most severely, affecting the security and safety of other building residents and the Landlord. These are actions specified by s. 56(2), particularly subsections (a) (i) through (v) above.

First, from the evidence I am satisfied that the evidence in the situation proves cause. Secondly, I find it unfair for the Landlord to wait for a set-period Notice to End Tenancy to take effect. I find the level of risk to the safety and security of other residents and the Landlord in the building merits an expedited end to the tenancy in that the Tenant maintains occupancy of the rental unit, with the family member still occupying the same rental unit. There is a high likelihood of recurrence.

I so grant an Order of Possession in line with this rationale, effective two days after its service by the Landlord on the Tenant.

Because the Landlord was successful in this Application, I find they are entitled to recover the \$100 filing fee from the Tenant.

Conclusion

For the reasons above, I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Landlord to retain \$100 from the Tenant's security deposit of \$637.50 in full satisfaction of the monetary award for the filing fee. The remainder of the Tenant's security deposit of \$537.50 will be dealt with at the end of this tenancy in accordance with s. 38 of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 28, 2022

Residential Tenancy Branch