



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1104976 B.C Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An early end to tenancy because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord, pursuant to section 56; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend the hearing although I left the teleconference hearing connection open throughout the 25 minute hearing to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by TM (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that the tenant was personally served with the notice of expedited hearing (“notice”) on March 3, 2022 at 7:35 p.m. A signed proof of service document was provided as evidence by the landlord. I am satisfied the tenant was duly served with the notice on that date.

This hearing was conducted in the absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?

Background and Evidence

The landlord gave the following undisputed testimony. The fixed one-year tenancy began on April 1, 2021 with rent set at \$1,625.00 payable on the first day of each month. A security deposit of \$812.50 was collected from the tenant which the landlord continues to hold.

The landlord testified that prior to filing this application for dispute resolution seeking an early end to the tenancy, she had filed a direct request application seeking an Order of Possession based on serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on December 3, 2021. The file number for that dispute is recorded on the cover page of this decision and the direct request proceeding has not been processed as of today's date. The landlord testified that the tenant has not paid rent since being served with the notice to end tenancy.

The landlord testified she seeks an early end to the tenancy because of the tenant's behaviour. On August 25, 2021, the tenant living below the tenant complained of a noisy party with loud music.

On December 2, 2021, a tenant living in a unit on a floor below the tenant complained that the tenant knocked on other tenants' doors on the third floor and ran away sometime between 9:30 and 10:00 p.m.

On December 9, 2021, there was a complaint from a tenant on the third floor regarding a disturbance outside this tenant's room. No details were provided by the landlord regarding this incident.

On December 18, 2021, another resident (not specified) emailed the landlord at 10:40 p.m., saying there was hammering and drilling coming from above. Less than 5 minutes later, there was crying and screaming. The police were called, as the other resident was worried about the tenant.

On January 24, 2021, another resident noticed a fire outside and saw the tenant setting it up. That resident approached the tenant and told her it was not safe. That resident sent a message to the resident manager advising her that he "dealt with it", however felt it was unsafe. The resident manager verbally spoke to the tenant the following morning and the tenant advised she set the fire to "make her feel better". A verbal warning was given to the tenant. Since then, there have been no fires set by the tenant, according to the landlord.

On February 14, 2022, the tenant living directly below the tenant complained of water pooling on the ceiling. Upon entering the tenant's unit, the landlord found tea bags and dirty clothes clogging the tenant's bathtub, hidden with inflated balloons. When asked by the landlord why she did this, the tenant gave no response. On the same day, the landlord noted there were burn marks on the walls. Photos of the burn marks and the bathtub were provided as evidence.

On February 15th, the landlord advised the tenant that she is responsible for the damage, including having the drain unclogged. The tenant did not respond to the letter.

Analysis

Section 56 of the Act establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- 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;
- engaged in illegal activity that 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, and

it would be unreasonable, or unfair to the landlord, the tenant 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. (emphasis added)

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

Orders for Possessions issued under section 56 of the Act are reserved for the most dire or urgent of situations. While the Tenants' conduct may have been disturbing to the Landlord and others, I find the circumstances of this case are not so significant or severe that it would have been unreasonable for the Landlord to have to wait for a One-Month Notice to take effect if there was sufficient cause to end the tenancy. It appears the most egregious incident relied upon by the landlord appears to be the fire set outside which the landlord acknowledges has not happened again since the verbal warning.

Under the circumstances, I find it would be reasonable for the landlord to serve the tenant with a One Month Notice to End Tenancy for Cause pursuant to section 47 if the landlord seeks to end the tenancy. After being served with the Notice, the tenant may either dispute the notice in accordance with section 47(4) or accept the tenancy ends on the effective date of the notice.

Therefore, I find that the Landlord has fallen short of the standard required to obtain an early end of tenancy under section 56 of the Act and the landlord's application for an early end to tenancy pursuant to section 56 of the Act is dismissed.

Conclusion

The landlord's application seeking an early end to tenancy is dismissed 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: March 14, 2022