



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect.

The landlord and the tenant attended the hearing, and the landlord was assisted by an Advocate. The parties each gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to discuss settlement of this dispute, and to question each other and the witness.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord gave testimony with respect to issuing a One Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Has the landlord established that the tenancy should end earlier than a Notice to end the tenancy under Section 47 would take effect?
- Has the landlord established that the One Month Notice to End Tenancy for Cause dated November 18, 2021 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that he was asked by a friend to accept the tenant to stay for 2 months while the tenant looked for a place to live. The tenant has been in the rental

unit since September, 2020 and pays no rent, and was only to occupy 1 room, as a guest only and the landlord did not ask for any rent. No security deposit was collected and no tenancy agreement was entered into. The rental unit is a 2 bedroom unit within the landlord's residence. However, the tenant moved in her whole family in December, 2020.

The landlord further testified that the tenant was asked to leave on several occasions, but refused to. On November 18, 2021 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the unit door. A copy has been provided for this hearing and it is dated November 18, 2021 and contains an effective date of vacancy of December 18, 2021. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenant has now moved in 2 sons, a daughter and the tenant's boyfriend. The children are now about ages 15, 21 and 22.

On October 24, 2021 the tenant went into the landlord's unit and stole items and entered the landlord's office and took some documents while the landlord was not home. The landlord returned home and saw the rooms messy. The landlord asked the witness, who occupied the landlord's unit with the landlord, and was told that the tenant entered the landlord's unit and accessed the landlord's main area and office. The landlord's witness was there at the time and told the landlord that he saw the tenant go upstairs into the landlord's private area and took something, which turned out to be documents pertaining to the ownership of the house.

In November and in December, 2021 the landlord went to the bank to pay the mortgage and was told that the house was in foreclosure. The tenant stole the mail from the bank, which was to inform the landlord what was owed on the mortgage. That lead to foreclosure.

The landlord feels unsafe. The landlord tried to deal with police, and the tenant is simply squatting.

The tenant's son damaged the garage door. The tenant has not served the landlord with Notice of Dispute Resolution Proceeding disputing the One Month Notice to End Tenancy for Cause.

The landlord's witness testified that he lived with the landlord for a short time.

The witness observed the tenant enter the landlord's home. The tenant went upstairs, and the witness took out the garbage. The tenant had mentioned earlier that she wanted to remove a hand towel steamer from the room that the witness' daughters were staying, and the witness believed those items were there, but didn't watch the tenant. The landlord had told the witness not to let the tenant in, but that was a day or 2 after their relationship went sour, and the witness didn't think it would be a big deal to let the tenant take the item, and used his own judgment.

The tenant testified that she didn't do anything wrong, and even spoke to a police officer who said that the landlord wouldn't listen to them.

The parties never had a rental agreement. At first, the tenant stayed in 1 bedroom with a son visiting on a weekend. The tenant paid rent in the amount of \$600.00 in cash from September, 2020 to November, 2021, and started to pay by cheque. On November 1, 2021 the tenant slid the cheque under the door, and the landlord returned it by sliding it under the door. The landlord didn't want any paper trail.

The tenant denies seeing a notice to end the tenancy on the door.

Further, the landlord's testimony about mail is incorrect. A person who does delivery for lawyers knocked on every unit in the house, including the tenant's unit, saying that he had documents for the landlord and tenant and gave the tenant a package. The tenant explained there were 4 units. The package was about foreclosure and every tenant got a copy.

There has been no damage to the garage door. The tenant keeps a bike and BBQ and stuff in there, and it's never locked. In December, the tenant's planter and table had been moved and the tenant told her son to check it. The garage had been locked and the table had been moved to the side. When the house was inspected for the sale, the garage was open and the tenant's bike and BBQ were gone.

The tenant agrees that the tenant called the landlord's witness about picking up a steamer and stuff in his daughters' room, and the tenant got the steamer and chairs, but still not the tenant's table. The tenant tried to avoid conflict with the landlord.

SUBMISSIONS OF THE LANDLORD'S ADVOCATE:

The tenant was allowed to stay as a guest and was never intended to be a tenant. She offered to pay utilities, but never paid any rent, and no tenancy agreement exists. The tenant tried to pay \$600.00 but the landlord refused it because he never intended to rent. The tenant only offered to pay rent after the landlord told her to leave in October, 2021. The tenant was there for over a year, out of the kindness of the landlord's heart, and was only supposed to be there for a couple of months.

Property damage has been caused by the tenant's son, who damaged the garage door trying to get in; a video has been provided as evidence. The tenant invaded the landlord's privacy, has moved some of the landlord's personal belongings, stole mail and the landlord fears that the tenant may turn on the landlord.

Analysis

Firstly, the landlord has applied for an Order of Possession under Section 56 of the *Residential Tenancy Act*, which states:

56 (1) A landlord may make an application for dispute resolution requesting

(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 [*landlord's notice: cause*], and

(b) an order granting the landlord possession of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

In this case, the landlord did give a One Month Notice to End Tenancy for Cause, and has provided a copy for this hearing.

The tenant testified that rent was paid in cash, which is disputed by the landlord, and no evidence of that has been provided by the tenant. The landlord testified that the tenant attempted to pay rent, but the landlord refused it, not wanting to have a landlord/tenant relationship with the tenant. The tenant also disputes seeing the One Month Notice to End Tenancy for Cause, however a landlord may serve such a Notice by posting it to the door or in a mailbox or other conspicuous place. I have no reason to disbelieve that the landlord served it in that manner on November 18, 2021, which is deemed to have been served 3 days later, or on November 21, 2021.

The *Act* also states that if a tenant fails to dispute such a Notice within 10 days of deemed service, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenant did not dispute it.

I have also reviewed all of the evidence, with the exception of a video, which I could not open. In particular is a 2-page letter from a witness who states that the witness has

been in touch with both parties, and was told by the tenant that the tenant opened the landlord's mail. The letter also states that the tenant was welcomed into the landlord's home as a guest only, and is doing everything possible to be viewed as a victim, but is very abusive, manipulative and threatening toward the landlord.

If no tenancy exists, the landlord may not seek an order under the *Residential Tenancy Act*, however since the tenant claims to have paid rent, I am satisfied that the *Act* applies.

Since the tenant has not disputed the One Month Notice to End Tenancy for Cause, the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in that amount. The landlord must serve the order on the tenant, and the order may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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 28, 2022

Residential Tenancy Branch