



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order to end the tenancy early and receive an order of possession due to the tenants posing an immediate and severe risk to the rental property, other occupants or the landlord under section 56 of the Act, and to recover the cost of the filing fee.

The landlord, ST (landlord) and a support person for the landlord, CL (support) attended the teleconference hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained and an opportunity to ask questions was provided to the agent. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Proceeding dated March 15, 2022 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenants on March 16, 2022 at the rental unit at 12:30 p.m. by posting to the rental unit door with duct tape, and was witnessed by CL. Given the above, I find the tenants were duly served under the Act on March 19, 2022 pursuant to section 89(2) of the Act. As the tenants did not attend the hearing and were deemed served, I consider this application to be undisputed by the tenants. Pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3, which address the consequences for failing to attend a dispute resolution hearing, the hearing continued without the tenants present.

Preliminary and Procedural Matters

The participants were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The participants were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the participants were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. None of the participants had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenants did not have an email address, the decision will be sent via regular mail to the tenants.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession under section 56 of the Act?
- If yes, is the landlord also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the first page of the tenancy agreement was submitted in evidence. The landlord testified that a month-to-month tenancy began on March 1, 2020. The landlord stated that monthly rent was \$1,995.00 per month and was due on the first day of each month. The landlord stated that the tenants paid a security deposit of \$997.50 at the start of the tenancy, which the landlord continues to hold.

The landlord wrote in their application the following:

The front yard has been destroyed by parking trucks and other vehicles there after being asked repeatedly not to park there and not using the designated parking spots that were agreed to in the lease. Stealing of lower tenants property and mail.

[Reproduced as written]

The landlord submitted 4 photos of the yard and driveway, and copies of two text messages. The landlord stated that the tenants began to park on the yard/grass of the

rental property beginning last summer and that after several warnings, the tenants continue to destroy the landlord's yard by parking trucks, which has ruined the yard of the rental property. The 4 photos submitted in evidence clearly show a large truck that has caused extensive damage to the grass area, resulting in what appears now to be a mud pit with boards thrown into the mud, likely to assist with traction to get in and out of the mud with the truck shown in the photos.

The landlord presented an email from the previous occupants who rented below the tenants. That email was dated March 1, 2022 (Email). In the Email the former tenant who previously lived below the tenant indicates that the reason he and his girlfriend moved out of the rental home was due to the tenants having loud arguments 24/7, opening their mail, and taking things from their storage. The Email also states:

"We could never sleep from hearing them fighting and being loud as well as disruptive. They also took my girlfriend's mail more than one occasion. That is why we could not continue to live in the suite."

[Reproduced as written]

The landlord also testified that in December 2021, the tenants failed to pay all of the rent for that month, so the landlord attended the rental property, and was told by the female tenant, "You don't know who you are dealing with." The landlord stated that he considered that a threat and ended up issuing a 10 Day Notice for Unpaid Rent in January 2022 and that the tenants have not paid any rent since December 2021.

The landlord stated that the tenant that lived in the lower portion of the rental home was scared for their safety and that their son was also scared for their safety but would not write the landlord a letter for fear of retaliation from the tenants in this matter. The landlord testified that they have called the police on numerous occasions and have been advised to only attend the rental property with the police present.

The landlord also mentioned that the tenants stole mail from the previous tenants and much of their personal items. The landlord summarized their concerns by stating that they have serious concerns about their rental property and that it is being destroyed by the tenants and that to repair just the yard alone would be anywhere between \$4,000.00 and \$7,000.00 depending on whether sod was used versus seed to repair all the damaged grass.

Analysis

Based on the undisputed testimony and undisputed documentary evidence provided during the hearing, and on a balance of probabilities, I find the following. I find the tenants have caused extraordinary damage to the residential property, and that the tenants have significantly interfered with or unreasonably disturbed both of the previous tenants living in the lower unit and the landlord. I have reached this finding based on the following:

Section 56 of the Act applies and states:

Application for order ending tenancy early

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

[emphasis added]

I am also satisfied that it would be unreasonable and unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act due to the ongoing damage to the residential property. I find the actions of the tenants to be unreasonable and that this tenancy must end. Furthermore, in addition to the property damage, I find that stealing from the lower tenants and causing a disturbance on a daily basis to the prior tenants supports this application. Therefore, pursuant to section 56 of the Act, I grant the landlord an order of possession for the rental unit effective **two (2) days** after service on the tenants. I find the tenancy ended the date of this hearing, **April 5, 2022** pursuant to section 62(3) of the Act.

The filing fee is granted pursuant to section 72 of the Act. I reduce the tenants' \$997.50 security deposit to \$897.50 effective immediately in full satisfaction of the \$100.00 filing fee pursuant to section 62(3) of the Act.

Conclusion

The landlord's application is successful.

The tenancy ended this date, April 5, 2022.

The landlord is granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession.

This decision will be emailed to the landlord and will be sent via regular mail to the tenants. The order of possession will be emailed to the landlord for service on the tenants. This order may be enforced through the Supreme Court of British Columbia. The tenants are cautioned that they can be held liable for all costs related to enforcing the order of possession.

As the landlord's application had merit, the landlord has been granted the recovery of the \$100.00 filing fee. The landlord has been authorized to deduct the amount of \$100.00 the tenants' \$997.50 security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to section 62(3) of the Act. I find the tenants' security deposit is now \$897.50 as a result, which has accrued no interest to date.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 5, 2022

Residential Tenancy Branch