



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on May 5, 2022. The Landlord applied for an order of possession pursuant to section 56 of the Residential Tenancy Act (the Act), and to recover the filing fee pursuant to section 72 of the Act.

The Landlord was represented at the hearing by PO, legal counsel. Also in attendance for the Landlord were MC, an agent, and RC, a witness. The Tenant attended the hearing and was assisted by LJ, a legal advocate, and MP, the Tenant's brother. All those giving evidence provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, PO advised that the Notice of Dispute Resolution Proceeding package was served on the Tenant in person on May 13, 2022. MP acknowledged receipt on behalf of the Tenant.

On behalf of the Tenant, MP testified that three evidence packages were sent to the Landlord. PO acknowledged receipt and stated that there are no issues with regard to the timing of service.

The parties were in attendance or were represented at the hearing and were prepared to proceed. No issues were raised with respect to service and receipt of the above documents. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Jurisdiction

At the outset of the hearing, the parties were referred to section 4(g)(v) of the Act, which states that the Act does not apply to accommodation provided in a housing-based health facility that provides hospitality support services and personal health care. In this case, the Landlord submitted an invoice dated March 31, 2022 for services provided to the Tenant. The invoice included charges for “[b]ath assist, unscheduled care needs, dressing changes”. Accordingly, the parties were asked to make submissions relating to jurisdiction.

PO submitted that the Landlord provides supportive housing to the Tenant which is covered under the Act. PO referred to Policy Guideline #46 which states:

Supportive housing is long-term or permanent living accommodation for individuals who need support services to live independently. The Residential Tenancy Act applies to supportive housing, unlike emergency shelters and transitional housing which are excluded from the Act.

On behalf of the Tenant LJ submitted that she was concerned about the same issue and confirmed that the Tenant receives supportive care.

After careful consideration, I find the Tenant resides in supportive housing and that the services provided to the Tenant are an adjunct to the tenancy agreement. As a result, I find that the Act applies to the tenancy agreement between the parties.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on March 1, 2020. Rent of \$1,804.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$902.00, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

The Landlord wishes to end the tenancy. The first witness for the Landlord, RP, is a nurse who works at the residential property. RP testified that the Tenant contracted Covid-19 on or about April 24, 2022. This is documented in a Log Book Report entry on the same date. Although the protocol for tenants who contract Covid-19 is to isolate for five days, the Tenant did not fully comply with this policy.

RP also testified that the Tenant is a smoker and has been permitted to smoke in the gazebo area as long as he returned to his suite right away. The Tenant was required to wear a mask when not in his suite. However, RP testified that on April 25, 2022 the Tenant was observed to be sitting in front of the elevator. He was not wearing a mask. A Log Book Report entry dated April 25, 2022, a copy of which was submitted into evidence, refers to moving throughout the property without a mask and smoking in his room.

RP testified further that the Tenant's disregard of rules caused a Covid-19 outbreak in the residential property and particularly on the Tenant's floor. RP suggested that 7/22 cases occurred on the Tenant's floor. RP testified that two residents were hospitalized as a result. RP submitted that other people's safety has been put at risk because of the Tenant's failure to comply with the rules.

MC is the executive director at the property. She testified that the average age of residents is 85, and that many present with cognitive, mental health, or mobility issues. MC testified that residents have been routinely made aware of changes to policies over the course of the Covid-19 pandemic. However, she testified that the Tenant "chooses not to comply". MC testified that she had several conversations with the Tenant to get him to comply. She believes he understands but "made a pact" with another resident relating to complying with rules.

The Landlord submitted a copy of a letter to the Tenant dated December 30, 2021. The letter describes an incident where a strong smell of smoke was detected in the Tenant's room. The letter states that an ashtray containing a cigarette butt was also observed. The Tenant was reminded that the tenancy agreement confirms that smoking is not permitted in the building due to the risk of fire and health concerns for other residents and staff. The letter refers to the Tenant's "on-going disregard of the Public Health Orders and the terms of your Tenancy Agreement places other vulnerable residents and staff at significant risk."

The Landlord also submitted into evidence a copy of a type-written letter to the Tenant dated March 3, 2022. It describes incidents including failing to wear a mask, failing to wear underwear in a communal area, resisting assistance with bathing, swearing at a receptionist, and smoking in a restricted area.

In response to the evidence and submissions of the Landlord, LJ questioned RP about contract tracing. RP responded and said the facility did contact tracing on its own and discovered that there were more cases on the Tenant's floor than in the rest of the building. LJ submitted that contact tracing is important, and that the Landlord cannot be absolutely certain that the outbreak was caused by the Tenant's behaviour. LJ submitted that workers could have been the cause of the outbreak, although MC responded and testified there were no positive Covid-19 tests among staff during that period.

LJ also advised that she has worked in the mental health field for a number of years and asked how the Landlord knows the Tenant is in control of his behaviour and is choosing to be dismissive of rules. RP responded and testified she heard the Tenant talking to another resident about the rules.

MP and LJ also suggested that the Landlord's position is contradictory and confusing. The Tenant was given permission to go outside to smoke. To do so, the Tenant has to go through common areas.

Analysis

Based on the documentary evidence and affirmed oral testimony, and on a balance of probabilities, I find:

Section 56 of the Act permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the Act. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the Act, which states:

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...

- (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.

In this case, I find that the Tenant's behaviours, which include smoking in his unit and other non-smoking areas and failing to adhere to policies established to prevent the spread of Covid-19 among a vulnerable population, seriously jeopardized the health or safety of other occupants in the building. I make no finding with respect to the cause of the Covid-19 outbreak, and it is not necessary for me to do so. However, I find that the significance of the potential impacts of the Tenant's behaviour on other residents favours granting an order of possession.

Further, I find it would be unreasonable or unfair to the Landlord to wait for a notice to end the tenancy under section 47 of the Act. The risks presented by the Tenant have been on-going and the Tenant has not altered behaviour despite repeated requests to do so.

I find the Landlord has demonstrated an entitlement to an order of possession, which will be effective two (2) days after service on the Tenant.

In addition, having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application. I order that this amount may be deducted from the security deposit held, leaving a balance of \$802.00

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: May 31, 2022

Residential Tenancy Branch