



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an early end to the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:54 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord and I were the only ones who had called into the hearing.

The landlord testified she served the tenant with the notice of dispute resolution package and supporting documentary evidence by posting them on the door of the rental unit on May 12, 2022. She submitted a proof of service form RTB-9 in support of this testimony. I find that the tenant has been served with the required materials in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) recover the filing fee;

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting April 1, 2022 and ending March 30, 2023. Monthly rent is \$2,490 and is payable on the first of each

month. The tenant paid the landlord a security deposit of \$1,245, which the landlord continues to hold in trust for the tenant.

The landlord testified that on April 11, 2022, the tenant was captured on video camera entering multiple storage lockers belonging to other occupants of the residential property without their consent. She was recorded removing items from those lockers. The landlord entered screenshots of the security camera recording into evidence. The landlord testified that each of the lockers the tenant is seen entering in the photographs were not lockers associated with the rental unit. The landlord also confirmed the identity of the tenant in the photographs.

The landlord testified that had been reported to the police, and that they are investigating this matter. She testified that the police told her not to remove any of the items from the rental unit's storage locker, as they are unsure as to whether any of those items belong to other occupants of the residential property.

The landlord also testified that the tenant was engaging in sexual activities in the common areas of the residential property, and that on at least one occasion a used condom was discovered by the building's concierge. As a result, the landlord testified that the strata corporation had deactivated the tenant's key fob to the gym and showers.

The landlord testified that the tenant contacted her after having received the notice of dispute resolution proceeding package and asked when she could "pick up her stuff". The landlord asked the tenant to contact the police due to the police request that she not remove any items from the storage locker.

Analysis

Section 56 of the Act sets out the criteria that must be met for a landlord's early end to tenancy application:

Application for order ending tenancy early

56(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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord must prove it is more likely than not that the tenant's conduct meets the criteria set out at section 56(2) of the Act.

I accept the landlord's undisputed testimony in its entirety. Based on her testimony, and the photographs submitted into evidence, I find that the tenant has removed items from the storage lockers belonging to other occupants of the residential property. This amounts to an unreasonable disturbance of those occupants, as well as an illegal act which has adversely affected the quiet enjoyment and the security of the other occupants. As such I find that the landlord has satisfied the requirements set out at section 56(2)(a) of the Act.

As such, it is not necessary for me to assess the landlord's allegations as to the tenant's sexual activities in the residential property common areas.

In light of the nature of the tenant's conduct, and the fact that she has asked when she can retrieve her belongings, which indicates that she intends to leave the rental unit, I find that it would be unfair to the landlord and the other occupants of the residential property to require her to wait to issue a notice down tenancy pursuant to section 47 of the Act.

Accordingly, I issue the attached order of possession, effective two days after it is served on the tenant in accordance with the Act.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she is entitled to recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of the monetary orders made above.

Conclusion

Pursuant to section 56 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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 30, 2022

Residential Tenancy Branch