



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET**

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 Sections 56 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord, ZMJM, and Support, DB, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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, her Support, and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord and Support that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord and Support testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the Notice of Dispute Resolution Proceeding package on April 21, 2022 by Canada Post registered mail (the "NoDRP package"). The Landlord uploaded a Proof of Service #RTB-9 form and also referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package on April 26, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issue to be Decided

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

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that this tenancy began as a fixed term tenancy on August 1, 2021. The fixed term is to end on July 31, 2022, then the tenancy would continue on a month-to-month basis. Monthly rent is \$1,650.00 payable on the first day of each month. A security deposit of \$825.00 and a pet damage deposit of \$825.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord has applied for an early end of tenancy. On her last inspection of the rental unit, she is unsure if the Tenant still resides in the rental unit. She observed that the toilet is no longer functional, and the bathroom vanity is kicked in and broken. There are holes in a wall and in a door leading to the upstairs rental unit. She also tested the stove which has many broken buttons, but it is also not functional. She observed drug items around the rental unit, such as pills, syringes, and tinfoil with a dark residue on it.

In the later part of 2021, the police were called to the Tenant's rental unit because of domestic disputes between the male and female tenants. The female tenant has since moved out. One other call was made to the police due to drug smells emanating from the rental unit to the upstairs unit. The Landlord also noted that a vent on the ceiling in the rental unit was taped up. The Landlord provided a police file number for the calls made to the rental unit.

The Landlord testified that the upstairs tenants have told her that if the Tenant remains in the rental unit, they will be moving out. The upstairs tenants are a family of four with two small children. The Landlord's Support stated that the upstairs tenants refused to attend the hearing as they are fearful of retribution from the Tenant if they provide testimony. The Landlord said her upstairs tenants are good tenants and she does not want to lose them.

The Landlord maintained that the smells from the rental unit are so bad, that it is a constant disturbance to the upstairs tenants. The Support stated the condition of the Tenant's misconduct spills out into the yard around the home. She said garbage has sat around for months as the Tenant does not maintain reasonable health, cleanliness, and sanitary standards in the house, as well as outside the house. The Landlord is also fearful that the rental unit's disarray, if left for a long period of time, will be impossible to clean up. The Tenant has threatened the Landlord that he wants his full deposits returned, and he will stay as long as possible as no one can get him out. The Landlord stated due to this Tenant's conduct her mental health has suffered. Recently, the Landlord required an increase in her anti-depressant medication as her rental home is a constant source of anguish on her. The Landlord left the hearing early as she had difficulty talking about the situation.

Analysis

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In this matter, Section 56 of the Act is relevant. It states:

Application for order ending tenancy early

- 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.*

Police calls into neighbourhood homes is an unwanted event, and especially so for a family with young children. I find the Landlord and other occupants of the home have experienced significant interference with or have been unreasonably disturbed by the Tenant. The Tenant's drug use is a disturbance to the upstairs tenants and the Landlord is worried that her business relationship with the upstairs tenants is at jeopardy if the Tenant remains in the rental unit. I find that the Tenant's conduct has seriously jeopardized the health or safety or a lawful right of the Landlord and the upstairs tenants. The Tenant has damaged the rental unit inside beyond reasonable wear and tear, and has broken the toilet and stove. I find these kinds of residual effects are at the

threshold of extraordinary damage, but the Landlord has proven on a balance of probabilities that the Tenant's conduct is disruptive. I find pursuant to Section 56(2)(b) of the Act, that the Tenant's actions and conduct make it unreasonable, or unfair to the Landlord of the residential property, to wait for a notice to end the tenancy under Section 47 [landlord's notice: cause] to take effect.

The Landlord has satisfied me on a balance of probabilities that an order to end this tenancy early is warranted and she is entitled to an Order of Possession, which will be effective two (2) days after service on the Tenant.

For the benefit of the Landlord, the Landlord may wish to discuss with an Information Officer at the RTB the options available to her to properly end this tenancy. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602 / 1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. This Order may be filed in and enforced as an Order of the British Columbia Supreme Court.

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.

Dated: May 17, 2022

Residential Tenancy Branch