



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 112538 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on April 6, 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 DM, legal counsel. GK, an owner of the rental unit, was also in attendance. Three witnesses attended the hearing and provided oral testimony: SM, Cst. DB, and DB. All those giving testimony provided a solemn affirmation at the beginning of the hearing. The Tenants did not attend the hearing.

At the beginning of the hearing, it was pointed out to the parties that the individual named in the tenancy agreement submitted into evidence did not match the Landlord named in the application. DM advised that the numbered company is the owner of the rental property and is correctly named.

SM testified the Notice of Dispute Resolution Proceeding package was served on the Tenants by attaching copies to the Tenants' door on April 14, 2022. A Proof of Service Notice of Expedited Hearing was submitted in support, which confirms service was witnessed by BH. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenants on April 17, 2022, three days after they were attached to the Tenant's door.

The Tenants did not submit documentary evidence in response to the Application.

All in attendance were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings.

The Landlord was given an 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.

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 tenancy began on May 1, 2020. Rent of \$2,500.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,250.00, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

The Landlord wishes to end the tenancy. On behalf of the Landlord, SM testified that he has attended the rental unit and that this rental unit is “particularly busy”. He has observed 12-13 people coming and going in a brief period for short periods of time. He has also observed fights, pushing and shoving, as well as drug use on the front steps. SM testified that he could go on for an hour about the issues at the rental unit.

Cst. DB also attended the hearing and provided testimony. He testified that on January 6, 2022, a number of members of the local RCMP detachment attended the rental property in response to a call regarding shots fired and/or a home invasion at the rental unit. Cst. DB advised that the members who attended confirmed shots were fired and that an occupant of the rental unit had been stabbed multiple times. Constable DB testified that there are a number of schools and parks nearby and that responding quickly is dangerous for residents. Constable DB also testified that members who attended on January 6, 2022, formed the opinion that the rental unit was being used for drug trafficking. There have been two more recent calls to the rental unit on April 4, 2022 (report of a man with a gun) and on April 28, 2022 (overdose).

In support, the Landlord submitted a letter from Cpl. RK dated March 17, 2022. The letter expressed “serious concern for public safety regarding ongoing criminal activity at your property”. The letter describes 42 calls to the rental property during the previous year, including calls related to shots fired, aggravated assault, sexual assault, weapons possession, and drug trafficking. Cst. DB confirmed that some of these calls were specifically in relation to the Tenant’s rental unit.

The letter describes a call to the rental unit on January 6, 2022, during which members attended the rental unit in response to a report of shots fired/home invasion. The letter states:

Upon arrival, numerous persons were observed to be at various levels of intoxication, indicating this residence to be a drug house. Members confirmed shots were fired, and that an occupant of the residence was stabbed multiple times. Suspects had fled prior to police attendance. A search warrant was executed, and while members were on scene, they observed evidence within the the [sic] home to form the belief that drug trafficking was occurring at this location.

The RCMP letter warns that the property may be designated as a “Nuisance Property”. If so, the Landlord will be subject to an abatement fee of \$1330.25 per call for every call for service to police, fire, or bylaw services.

DB is a representative of the local municipality who provided testimony with respect to the rental unit. He stated there have been a lot of calls for service due to criminal activity. DB also testified there have also been calls related to the condition of the rental property. As the Landlord has been very cooperative with the municipality, the property has not yet been deemed to be a nuisance property, as described in the letter above.

The Tenants did not attend the hearing to dispute the Landlords’ evidence.

Analysis

Based on the unchallenged 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 it is more likely than not that the Tenants and/or persons permitted on the property by the Tenants have seriously jeopardized a lawful right or interest of the Landlord, and/or have engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of the Landlord. Specifically, I find the risk of the rental unit and property being declared a nuisance property jeopardizes a lawful financial right of the Landlord to be free from this form of penalty. I also find that the incidents described by the witnesses have significantly interfered with or unreasonably disturbed the Landlord.

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.

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

In addition, having been successful, I find the Landlord is entitled to recover the filing fee paid to make the application. I order that \$100.00 may be deducted from the security deposit held, leaving a balance of \$1,150.00.

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenants. The order of possession must be served on the Tenants. 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 17, 2022

Residential Tenancy Branch