



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the “*Act*”):

- An order for the early termination of a tenancy pursuant to s. 56; and
- Return of their filing fee pursuant to s. 72.

M.O. and C.R. appeared as the Landlords. The Tenants did not appear at the hearing, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlords advised that the Notice of Dispute Resolution and their evidence was served on the Tenants by way of registered mail sent on April 28, 2022. The Landlords provided registered mail tracking receipts as proof of service. The Landlords provided video evidence to the Residential Tenancy Branch and confirmed at the hearing that the video evidence was served on the Tenants in the registered mail sent on the 28th. I find that the Landlords’ Notice of Dispute Resolution and evidence were served in accordance with s. 89 of the *Act* by way of registered mail sent on April 28, 2022. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Landlords’ application materials on May 3, 2022.

Issues to be Decided

- 1) Are the Landlords entitled to an order for possession without issuing a notice to end tenancy?
- 2) Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlords confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on December 12, 2021.
- Rent of \$2,200.00 is payable on the 12th day of each month.
- The Landlords hold a security deposit of \$550.00 and a pet damage deposit of \$550.00 in trust for the Tenants.

The Landlords advised that the subject rental unit is a single detached dwelling in which there is a basement suite. The Landlords confirmed they own the residential property.

The Landlords testified that they are undertaking renovations in the basement suite at the property. The Landlords indicated that they set a surveillance camera in the basement suite. The Landlords testified that the Tenants broke into the basement suite on April 23, 2022. The Landlords provided the videos as evidence in their application and testified that the individuals in the videos are the Tenants.

I have reviewed the three videos provided by the Landlords. All three videos are date stamped to April 23, 2022 and run from approximately 1:51 to 1:53 AM. The first video shows two individuals walking about the room, with the male appearing to say “the neighbours can’t see us down here dude, don’t call the cops” and “is there anything we want down here”. The second video shows the two individuals walking about and the female appearing to say “oh shit” when she took notice of the camera. The third video shows an empty room and the audio covers what appears to be loud banging in the background.

The Landlords testifies that they contacted the RCMP with respect to the apparent forced entry into the basement and further advised that J.D. has been charged with

breaking and entering. The Landlords say nothing had been stolen from the basement as the Tenants took notice of the camera.

The Landlords further testified that the RCMP knew of the Tenants and that an RCMP officer provided his or her opinion that they believed the Tenants to be, as stated by M.O. at the hearing, "low level drug dealers". The Landlords testified that when they were undertaking the renovations at the basement, they noticed vehicles coming and going to the property and brief exchanges taking place between the occupants of these vehicles and the Tenants. The Landlords further testified that they have spoken with the property's neighbours who advised the Landlords that they have witnessed similar exchanges.

The Landlords testified that windows at the property have been broken since the Tenants moved into the rental unit. They testified to their belief that the windows have been broken by third parties and the property damage is directly related to the Tenants sale of illicit substances at the residential property.

M.O. further testified that on or about April 23, 2022 he received a threatening text message from an unknown cell phone number which stated his address and indicated that they knew where he lived. M.O. further testified that when he witnessed one of the exchanges at the property the Tenant had took notice that he was being watched and gestured gun with his hand and pointed it to the Landlord.

The Landlords testified to fearing the Tenants. The basement suite renovations have not been completed as the Landlords have avoided attending the residential property. The Landlords confirmed that the basement suite remains unoccupied.

The Landlords further advised that they have another hearing before the Residential Tenancy Branch with respect to the issue of non-payment of rent, which is not relevant to their present application.

The Landlords confirm that the Tenants continue to reside within the rental unit.

Analysis

The Landlords seek to end a tenancy without issuing a notice to end tenancy.

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between ss. 47 and 56 is that under s. 56(2)(b) a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline #51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

As it is the Landlords' application, they bear the burden of proving on a balance of probabilities that they are entitled to an order for possession under s. 56 of the *Act*.

I have reviewed the video evidence. The Landlords state and I accept that the individuals in the videos are the Tenants and that the videos capture the basement suite of the residential property. I further accept that the videos were captured as stated on their time stamp, which was in the early morning of April 23, 2022. I place significant weight in the video evidence, which clearly shows the Tenants walking about the basement suite and the male Tenant stating "is there anything we want down here".

The Landlords further testified, and I accept, that J.D. has been charged with breaking and entering with respect to the incident on April 23, 2022. I note that the Landlords need only prove on a balance of probabilities that illegal activity took place. I find that they have done so based on the videos and their undisputed oral testimony, which

clearly demonstrates the Tenants breaking into the basement suite. I find that the illegal activity, being the forced entry into the basement, caused damage to the Landlords' property. It is likely property would have been stolen had the camera not been noticed.

I further find based on the Landlords undisputed testimony that the Tenants are more likely than not dealing illicit substances at the residential property. I make this finding based on the information the Landlords say they received from the RCMP and based on the Landlords own observations of the brief exchanges between the Tenants and the unknown third parties at the property. The sale of illicit substances is illegal. This illegal activity appears to have caused damage to the Landlords' property, namely the windows that have been broken, and is likely to cause further damage to the property.

I am further deeply concerned about the text message the Landlords indicate they received from an unknown third party, which stated their address and indicated they knew where they lived. I accept the Landlords undisputed oral testimony that this text message was received on or about April 23, 2022. I find that it is more likely than not that the Tenants were directly involved in the menacing text message. I make this finding based on the fact that the text message was received in or about the same time as the forced entry into the basement and based on the threatening gun gesture the Tenant made toward M.O. when he witnessed an apparent drug exchange. I find that the Tenants menacing behaviour toward the Landlords has, quite reasonably, affected the Landlords' willingness to attend the property thus impeding their lawful right to do so and preventing their ability to complete the renovations to the basement.

Considering the conduct of the Tenants, in particular the Tenants forced entry into the basement, I find that it would be unreasonable and unfair to the Landlords to wait for a One-Month Notice issued under s. 47 to take effect. The Tenants willfully damaged the Landlords' property by forcing entry. Windows have been broken due to the Tenants illegal sale of illicit substances. The Tenants' threatening conduct toward the Landlords is deeply concerning and is unacceptable under any circumstances. Viewed as a whole, the Tenants conduct is such that additional delay would likely expose the Landlords' to increased personal risk and increased risk to the property.

I find that the Landlords have made out their claim under s. 56 of the *Act* and are entitled to an order for possession.

Conclusion

I grant the Landlords claim under s. 56 of the *Act* and grant them an order for possession. The Tenants shall give vacant possession of the rental unit within **two (2) days** of receiving the order for possession.

As the Landlords were successful in their application, I find they are entitled to the return of their filing fee. I order pursuant to s. 72(1) of the *Act* that the Tenants pay \$100.00 to the Landlords for their filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Landlords retain \$100.00 from the security deposit in full satisfaction of the amount owed by the Tenants for the filing fee.

It is the Landlords' obligation to serve the order for possession on the Tenants. If the Tenants do not comply with the order for possession, it may be filed by the Landlords with the Supreme Court of British Columbia and enforced as an order of that 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 *Residential Tenancy Act*.

Dated: June 16, 2022

Residential Tenancy Branch