



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as they say that the Tenants pose an immediate and severe risk to persons and/or property.

The Tenants, M.C. and D.L., and the Landlords, A.G. and W.B., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing, the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlords provided the Parties' email addresses in the Application, and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an early termination of the tenancy agreement, and an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on March 1, 2022, with a monthly rent of \$2,000.00, due on the first day of each month. They agreed that the Tenants paid the Landlords a security deposit of \$1,000.00, and a pet damage deposit of \$1,000.00, and that the Landlords still hold the deposits in full.

In their Application, the Landlords said:

The Tenant has been harassing, belligerent and made threats, tenants tore apart the garage & destroyed personal property, Removed parts of the property that were not supposed to be removed. He threw belongings outside destroying them and leaving them in the rain, items were missing as well. Tenant was asked several times to return property to how it was, even when given 2 demand letters he continued to remove and damage things. The tenant has also contacted my ex wife and made allegations to her.

[reproduced as written]

The Landlords said that the Tenants were served with a One Month Notice to End Tenancy for Cause ("One Month Notice"); however, the Landlords seek an early termination of the tenancy and an Order of Possession for the rental unit, as they say the Tenant, D.L., poses an immediate and severe risk of causing further damage to the Landlords' property.

In the hearing, the Landlords said that on or about mid-February 2022, they both contracted Covid. The Landlord, W.B., said she was very sick and had to be hospitalized. She also said she broke some ribs, which worsened her situation. The Landlord, A.G., also contracted Covid, but still, he tried to prepare the residential property for the new Tenants.

Based on the Parties' testimony and documentary submissions, I find that the essence of the dispute is that the residential property was not emptied nor cleaned properly by the start of the tenancy on March 1, 2022. The Landlords explained that given their

respective illnesses, they were unable to prepare the residential property for the new Tenants.

However, the undisputed evidence before me is that the Landlords arranged for the rental unit to be cleaned by a professional cleaner, although, the Tenants did not find that this person did a sufficient job.

The Landlords' concerns involved the Tenants not giving the Landlords time to clear out the contents of the garage and workshop. Rather, they said that the Tenants moved the Landlords' belongings from the garage, damaged some, and left them in the alley in the open, to be further damaged by rain and possibly stolen by passers-by. They also claimed that the Tenants destroyed the Landlords' gazebo in the yard.

The Landlords submitted photographs of the condition of the residential property before the Tenants moved in, and photographs of the residential property after the Tenants cleared out the garage. The Parties agreed that the Tenants said that the Landlords had until March 31, 2022, to clear out their belongings and those of prior tenants. However, the Tenants said they did not have faith that the Landlords would do what they said, as little action had been taken so far.

The Landlords said that on some occasions when they were going to do repairs, remove items, and/or clean the residential property, the Landlords' dogs frightened them from doing some of this work.

The Landlords also testified that the Tenant, D.L., yelled and swore at them in person and used offensive language in emails and texts. The D.L. denied this in the hearing; however, I note the following passages from his communications with the Landlords (reproduced as written, with identification concealed).

D.L.

2:45 P.M. Mar. 4

We won't be at the house tonight at 4. You're welcome to go in and get all your junk out. We have the dogs with us but we left the cats in the master bedroom so they don't run outside on you. Please be sure that they stay in there when you go to get your jerk off box out of the closet and whatever other shit is in there. Please try to be as quick as possible but at the same time, take EVERYTHING that is yours. Don't leave your shit for us to clean up and throw out.

...

Let's be realistic here. You left us a dump and all this is doing is bettering your home so you're better off in the end anyways. I hope it's not met with any resistance. Super shitty to start off this way but it's all business now. A 'buddy' wouldn't even think of doing what you just did. Once I have the form emailed back, I will send you some repairs that need to be done ASAP as well as some reasonable dates for the less urgent things to be completed. . . . We have spent hours going through and documenting your shit. The 300 dollar a month shop doesn't have one empty drawer for me to use, they're full of absolute garbage and the bird shit is out of hand. You can't tell me that you don't know how dangerous that can be. . . . You tell me that it was the fire captain in this house before us? God damn that's hard to believe. It's also super shitty that you criticized your friends cleanliness and their way of living behind their backs when it's clear that the house hasn't been properly cleaned for years.

In an undated email from the Landlords to the Tenants, the Landlords said:

...don't give a shit as u have said) and we have worked hard to correct them. You how ever have shown us everything u had said just to get into the house was a lie. So from now on u can email ONLY your request for repairs and I will respond on or before the deadline I am required to. We will give u 24 hours notice and u can be away from the house as well as ur dogs as they were growling and barking this morning, when we come to do them and when we do our inspection every month, you were home today so we did not come in after ur message this morning and what u did to the garage. You can pay ur rent by e transfer to [email address] and we will just get threw this year in peace, Any more threats or slander or damage made by u or [M.C.] (not that she has that I'm award of yet) towards either [A.G.] or myself I will be going to the police and pressing charges. I also want [A.'s] Welder, grow lights, drum set, acetylene Bottle, Antique table from the loft and everything else u felt like removing and hiding returned or we will charge u with theft. You did not have permission to rip out shelves, ventilation. . .

In another undated email, the Landlords state:

What exactly have we not addressed that u have brought up? You say what shit people we are yet you are the one who insults, threatens, calls names etc. not once have we been mean or rude. [A.] is an amazing man and no I won't let u belittle him and insult him just to make urself feel better, you are a bully. He has busted his ass trying to please u but u seem like the guy who will never be happy

and u get off on treating people this way. . . .

The Landlords submitted texts that [A.G.'s] ex wife received from D.L. with insulting comments about the condition of the residential property. They also submitted a photograph of their gazebo frame up in the yard prior to the tenancy, and another shot of it taken apart and leaned against a shed, once the Tenants had moved in.

The Landlords submitted photographs of possessions and debris piled up outside the garage that the Tenants had left without cover or protection from the weather or the public. The Landlords submitted photographs of a stereo wire that had been cut, shelves that had been removed from the garage and broken, a damaged new light from the deck, a broken ceiling fan, a smashed grandmother clock in a box; and miscellaneous tools and other belongings strewn on the ground.

In the hearing, the Landlord said: "An irreplaceable painting was ruined in the rain." He provided a photograph of a large painting that was damaged. The Tenants did not deny that they caused the damage noted by the Landlords above.

The Tenants submitted photographs of a dirty, cluttered garage; markings on drywall and the ceiling in the house, the Landlords' boat still stored beside the garage, a dirty carport pit, and dirty window sills.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 56 (2) of the Act states that a landlord may apply for an order for an early end to the tenancy, if the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (2) (a) (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;
- . . .
- (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.

I find that the means with which the Tenant, D.L., addressed the Landlords and dealt with their possessions, was offensive, antagonistic, damaging, and relatively uncivilized. I find that the Tenant, D.L., was unnecessarily rude and aggressive with the Landlords, and had no respect for their property or their efforts to remedy the situation for the Tenants. I find that the Landlords were doing their best to address the Tenants' issues, despite being sick with Covid.

However, I do not find that the Landlords are without blame, as I find that they encouraged the Tenants to move in earlier than the Tenants needed to, given their prior tenancy. I find it would have been prudent of the Landlords to delay the move-in, given their health and the condition of the residential property at the end of February 2022. Further, the Landlords could have hired someone to assist, rather than trying to do it themselves.

I find from the Tenants' photographs that the inadequacies in the house were minor, compared to the contents of the garage. As such, I find that the Tenants' living condition within the house was reasonable in the circumstances. Policy Guideline #1 states that the prior tenants were required to repair any damage they caused to the residential property, and leave the rental unit "reasonably clean and undamaged". PG #1 states that a tenant is not responsible for reasonable wear and tear or for cleaning to bring the premises to a higher standard than that set out in the Act. PG #1 also states:

An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

I find that the condition of the garage was unacceptable; however, I also find that the immediate use of the garage was not necessary for the Tenants to live in the premises. Rather than having tried to empty and clean the garage, themselves, the Tenants could have and probably should have applied for compensation from the Landlords through the RTB for services or facilities not provided. However, the only reference to the garage in the tenancy agreement is in clause 37, which states:

37. tenant is responsible for regular general [maintenance] of the hot tub and chemicals also discussed with tenant was leaving behind some tools for

his use in the garage these tools will be logged and pictures taken tenant responsible for any damages and maintenance to this equipment land lord will go over the equipment with tenant and sign

As such, I find that the Tenants' preoccupation with the garage and its contents was unjustified and unreasonable in the situation. Further, the Tenants' behaviour surrounding the garage and its contents caused damage and loss to the Landlords' such that it significantly interfered with or unreasonably disturbed the Landlords, seriously jeopardized a lawful right or interest of the Landlords, and put the Landlords' property at significant risk, contrary to the Act.

As such, I find that the Landlords are successful in their Application, as I find they met their burden of proof on a balance of probabilities with the evidence and testimony submitted.

I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for a One Month Notice to End Tenancy to take effect, as I find without an early termination of the tenancy, the Landlords are less likely to be able to preserve their property.

Further, the Landlords already issued a One Month Notice, the effective vacancy date of which the Tenants ignored. This, I find, is another reason to provide the Landlords with an Order of Possession for an early termination of the tenancy.

I therefore grant the Landlord's Application to end this tenancy early, pursuant to section 56 of the Act, and grant them an Order of Possession effective two days after deemed service on the Tenants.

Conclusion

The Landlords have established on a balance of probabilities that the Tenants' behaviour warrants an early termination of the tenancy and an Order of Possession, pursuant to section 56 of the Act. Accordingly, I Order that the tenancy is ended two days from the date on which the Order of Possession is served on the Tenants.

Pursuant to section 56 of the Act, I grant the Landlord an **Order of Possession**, which must be served on the Tenants, and **which is effective two days from the date of service** on the Tenants.

Should the Tenants fail to comply with this Order, this Order may be filed in the

Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 07, 2022

Residential Tenancy Branch