



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an order for early end to tenancy and an Order of Possession of the rental unit pursuant to section 56; and
- authorization to recover the filing fee for this application from the Tenants pursuant to section 72.

The Landlord's agent WK attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 9:40 am in order to enable the Tenants to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that WK and I were the only ones who had called into the hearing.

I advised WK that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. WK confirmed he was not recording this dispute resolution hearing.

Preliminary Matter – Service of Dispute Resolution Documents

WK testified that a package containing the notice of dispute resolution proceeding package and the Landlord's supporting documentary evidence (the "NDRP Package") was slipped under the Tenants' front gate and onto their porch on May 5, 2022. WK testified the Tenants had barricaded themselves inside the rental unit and the gate had been screwed shut. WK testified that he had spoken with the Tenants since serving the NDRP Package and was told that the Tenants do not care about the dispute resolution hearing. The Landlord submitted a signed Proof of Service in form #RTB-9. Based on WK's testimony, I find that the NDRP Package was left at a conspicuous place where

the Tenants reside, on May 5, 2022. Accordingly, I find that the Tenants have been sufficiently served with the NDRP Package in accordance with section 71(2) of the Act, Rule 10.3 of the Rules of Procedure, and section 2(b) of the director's standing order dated March 1, 2021.

Issues to be Decided

1. Is the Landlord entitled to end the tenancy early and an Order of Possession?
2. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The Landlord submitted a copy of the parties' tenancy agreement into evidence. WK confirmed the particulars of the tenancy as follows:

- The tenancy commenced on December 31, 2021 and is for a fixed term ending on December 31, 2022.
- Rent is \$1,950.00 per month, due on the first day of each month.
- The Tenants paid a security deposit of \$850.00, which is held by the Landlord.

WK testified the rental unit is located above a retail space, and that the Tenants have allowed water damage to leak from the rental unit to the retail space below on three separate occasions.

WK explained that the first incident took place in or around February or March 2022. When he attended the rental unit, WK discovered a "lake" under the sink. WK stated he saw the Tenants had put a plastic container under the sink, and then allowed the container to tip, causing the water to drip into the retail space below.

WK testified a second incident took place on April 21, 2022. WK stated there was another "lake" inside the rental unit, which caused damage to the retail unit below. The Tenants initially refused access, and the police were called. WK provided police file number 22-22980 in respect of this incident. WK testified when he was able to get inside the rental unit, he saw that the plumbing under the sink inside the rental unit was

undone. WK testified he hired a plumber to fix the damage. WK stated that the ceiling of the retail unit below had to be replaced for the second time as a result of this incident.

WK testified that on or around May 19, 2022, water was again pouring down from the rental unit into the retail space below. WK stated that the water damage was in excess of \$2,000.00 this time. WK said he attended at the rental unit on the same day and found the door to be wide open, with no one home. WK stated that a large mirror was in the bathtub, the shower was on, and there was about 1 inch of water on the floor. The Landlord has submitted into evidence photographs of the rental unit taken by WK on this occasion.

WK explained that the parties had a previous dispute resolution hearing in March 2022. The file number for that hearing is referenced on the cover page of this decision. WK testified the Tenants had apologized then, and WK agreed to give them a second chance. However, WK testified that when he entered the rental unit on May 19, 2022, he saw that there was significant damage inside the rental unit, including graffiti on the wall, removed doors and tiles, as well as damage to the ceiling and light fixtures. The Landlord has submitted photographs in support.

WK testified the Tenants have screwed the front gate shut and changed the locks to the rental unit without the Landlord's consent. The Landlord submitted photographs of the blocked entry to the rental unit and damaged drainpipe.

WK stated that there are other ongoing issues with the Tenants, including the male Tenant harassing a next-door neighbour, creating excessive garbage, as well as loud music, yelling and screaming coming from the rental unit.

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.

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

In this case, the Landlord bears the onus of proving that this tenancy should be ended early and an Order of Possession be granted.

Section 56 of the Act states as follows:

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.

Based on WK's testimony and the photographic evidence submitted by the Landlord, I am satisfied on a balance of probabilities that an early end to the tenancy is warranted in the circumstances. In particular, I find that the Tenants have caused extraordinary damage to the rental unit on April 21, 2022 by undoing the plumbing under the sink. I find that by undoing the plumbing and causing water to leak into the retail unit below, the Tenants have also significantly interfered with, unreasonably disturbed, and seriously jeopardized the lawful interest of another occupant of the building. In addition,

I find that the Tenants have put the Landlord's property at significant risk by causing various damage inside the rental unit and by blocking off the entry. I note that these incidents took place after the parties' dispute resolution hearing in March 2022, and that the Tenants' behaviours have not improved. Therefore, I find the Landlord has met the onus of proving that this tenancy should end early under sections 56(2)(a)(i) to (iii) and (v) of the Act.

In addition, I find the Landlord has established, pursuant to section 56(2)(b) of the Act, that it would be unreasonable and unfair for the Landlord and the occupant of the retail unit below to wait for a notice to end the tenancy under section 47 to take effect. I am satisfied that it would be unreasonable and unfair for them to wait because of the serious and ongoing risk to their property posed by the Tenants. I find that the water damage incident caused by the Tenants on May 19, 2022 to be even worse than the April 21, 2022 incident. I find there is serious risk that the Tenants may cause further damage to the rental unit and to the retail unit below.

Having found the requirements in sections 56(2)(a)(i) to (iii), (v), and 56(2)(b) of the Act to be met in the circumstances, I conclude that this tenancy should be ended early.

2. Is the Landlord entitled to recovery of the filing fee?

As the Landlord has been successful in this application, I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to deduct \$100.00 from the \$850.00 security deposit held by the Landlord in full satisfaction of the amount awarded in this application.

Conclusion

The Landlord has met the burden of proving that the tenancy should end early.

Pursuant to section 56(2) of the Act, I order that the tenancy is ended the date of this decision, June 22, 2022.

Pursuant to section 56(2), I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenants. The Tenants must be served with this Order as soon as possible. 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.

The Landlord is authorized to deduct \$100.00 from the Tenants' security deposit on account of the filing fee awarded in this application. The balance of the Tenants' security deposit shall be dealt with in accordance with the Act, the Residential Tenancy Regulation, and the parties' tenancy agreement.

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 22, 2022

Residential Tenancy Branch