



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management
Services and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on May 19, 2022 seeking an order to end the tenancy on the basis that the Tenant poses an immediate and severe risk to the property, other occupants, or the Landlord. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 20, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the hearing; the Tenant did not.

Preliminary Matter – notification of the hearing

The Landlord stated that they delivered notice of this dispute resolution, on the form sent to them by the Residential Tenancy Branch, by attaching a copy of the document to the door of the rental unit on May 27, 2022.

They had no communication with the Tenant since this date of service. The Tenant’s family member reached the building’s caretaker and presented they were aware of the possibility of the tenancy ending. The Landlord – via the caretaker – encouraged the Tenant’s own family member to read the document to be fully informed on the contents and steps needed on their part. That family member also provided information to the Landlord that the Tenant was in the hospital.

From what the Landlord presents here on notifying the Tenant of this hearing, I am satisfied they served the Tenant notice of this hearing in a method prescribed by the

Act, particularly s. 89(2)(d). This included all the evidence the Landlord prepared for this hearing.

Given my finding that the Landlord effected service in the proper manner and in compliance with the *Act*, I proceed with the hearing. I conducted the hearing, in the absence of the Tenant, as allowed by Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure*.

Issues to be Decided

Is the Landlord entitled to an order of possession that ends the tenancy for cause and without notice by s. 56 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord confirmed there is a tenancy agreement in place and provided a copy of it for this hearing in their evidence. The Tenant moved into the unit in March 2015. The rent amount was \$700 per month; however, by the time of the hearing the Tenant paid \$818 per month.

The Landlord set out that they would regularly conduct inspections within the rental unit. This included a regular check of the fire alarm system. This was on a quarterly basis. Over the last 2 years, with restrictions because of public health in place, this did not occur in the Tenant's own individual rental unit. The Landlord resumed these inspections; however, for the last 2 attempts they made at an inspection, the Tenant would post a sign outside their rental unit door that they were ill. The Landlord's final attempt at inspection within the rental unit was on May 5, 2022.

On May 18, 2022, the unit occupant below the Tenant contacted the Landlord on the basis of a water leak within their own rental unit. This was from the bathroom fan on the ceiling. The Landlord entered the Tenant's rental unit on an emergency basis because of this leak. They discovered the Tenant's bathroom sink running on full and overflowing and causing the leak below. The Tenant was not present within the rental unit at this time.

The Landlord presented 33 pictures showing the state within the rental unit. This showed the sink running on full, and a very dishevelled state throughout. They presented details about extensive mould within the rental unit, particularly, the bathroom area. There is garbage throughout, in a very unclean state, and food in the kitchen refrigerator that is no longer fit for consumption. On their Application, the stated: "This has caused the unit to be in an unlivable and unsafe living environment." The accumulated garbage is noted as a fire hazard, and an attraction to pests.

The Landlord was specific on their Application in citing the Tenant for causing a plumbing issue, and not notifying the Landlord of this. They seek to gain possession of the rental unit because of the high risk to the rental property as well as other occupants within the rental unit building.

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 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 tenancy were given under section 47 [*landlord' notice: cause*], and
 - (b) an order granting the landlord possession of the rental unit.

Two criteria are present in s. 56(2). First, the landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to a landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (a) The tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (iii) put the landlord' property at significant risk;
 - (v) caused extraordinary damage to the residential property
 - . . .

I have considered the evidence of the Landlord concerning the state of the unit.

I find there is sufficient evidence to show the Tenant is the source of legitimate concern of significant risk to the property. This is specified by s. 56(a)(iii) above. The evidence presented by the Landlord here shows this risk. This also places the safety of the Landlord, as well as the Tenant, at risk with a high risk of fire and basic lack of health standards.

Further, from the photos provided by the Landlord I find the Tenant caused extraordinary damage to the property. This affected other occupants within the rental unit building. The rental unit, as presented in the evidence of the Landlord, is unlivable.

First, from the evidence I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the Landlord to wait for a set-period Notice to End Tenancy to take effect. I find the present situation merits an expedited end to the tenancy. I so grant an Order of Possession in line with this rationale.

As the Landlord was successful in this Application, I find they are entitled to recover the \$100 filing fee paid for this application.

Conclusion

For the reasons above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to s. 72 of the *Act*, I grant the Landlord a Monetary Order for the recovery of the filing fee paid for this Application. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 s. 9.1(1) of the *Act*.

Dated: June 20, 2022