



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on May 17, 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 7, 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 to the Tenant via process server. That process server completed a Proof of Service document, with a witness signature. That stands as evidence the process server served the notice of this hearing, along with the Landlord’s evidence, to the Tenant on May 21, 2022. This was “handed directly to the respondent [Tenant] at the rental unit address. . . [The Tenant] verbally confirmed [their] identity to myself & witness” as stated on the Proof of Service document.

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*.

The tenants did not attend the hearing and did not provide any documentary evidence in advance.

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 April 2006. The rent amount is \$800 per month, and this never increased. They initially paid a security deposit of \$400.

The Landlord set out that since 2013 the Tenant here was the sole occupant; however, they took on subtenants. The Landlord made incidental needed repairs to the rental unit over the years. In approximately summer 2021, they hired a contractor to replace the deck at the rental unit, and that contractor provided more information to the Landlord about the state of the rental unit.

The LL had ongoing difficulties contacting the Tenant. In spring 2022 they travelled to the rental unit to view first-hand its condition. The Landlord and Tenant entered discussions about a potential sale of the rental unit property to the Tenant; however, the realtor involved stated they could not sell the rental unit home given its current condition.

The LL completed a comprehensive Condition Inspection Report on April 28, 2022 and this all the flaws and serious areas of concern in the rental unit. There are areas involving serious health hazards as well as high risks of fire or other sources of combustion. The most serious observations are: extensive black mould throughout; use of the kitchen stove for heating in the rental unit; and cigarettes disposed of in the bedroom space in an obvious unsafe manner. The Landlord provided photos in their evidence showing the areas within the rental unit that are of serious concern.

The Landlord also provided an account of the realtor they worked with who attended for a viewing, and they summarized the state of the rental unit as “a disaster”. In their evidence they also provided an opinion of a contractor/electrician who noted the potential for the furnace to fail completely, a high risk of fire because of the oven range used for heating the home, major

risk of fire because of the cigarettes improperly disposed of, and “water/urine/food damage” causing mould to spread.

In the hearing the Landlord spoke of their interaction with the Tenant, citing their immediate concern with the Tenant’s own ability to manage day-to-day living at the rental unit, as well as concern for serious negative impact the state of the rental unit is having on the Tenant.

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 the 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 over significant risk to the property. This is specified by s. 56(a)(iii) above. The evidence presented by the landlord 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.

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 7, 2022

Residential Tenancy Branch