



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on May 17, 2022. The Landlord applied for an order of possession pursuant to section 56 of the Residential Tenancy Act (the Act) and to recover the filing fee pursuant to section 72 of the Act.

The Landlord was represented at the hearing by HVL, her son, who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, HVL testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by attaching a copy to the Tenant's door on May 25, 2022, which service was witnessed by HLAN. A Proof of Service Notice of Expedited Hearing document was submitted in support. Pursuant to sections 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on May 28, 2022, three days after they were attached to the Tenant's door.

The Tenant did not submit documentary evidence in response to the application.

HVL was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

On behalf of the Landlord, HVL confirmed the tenancy began on July 1, 2018. Currently, rent of \$1,400.00 per month is due on the first day of each month. This is less than what is indicated in the tenancy agreement submitted into evidence. HVL testified this is because rent was reduced during the Covid-19 pandemic. The Tenant paid a security deposit of \$725.00, which the Landlord holds.

HVL testified that the Landlord tried to renew insurance in March 2022 and discovered she could not do so because the Tenant was operating a home-based business. HVL testified he is unsure of the nature of the business but stated there are a number of drums being stored on the rental property. In support, the Landlord submitted a photograph of the back of the rental property depicting a number of large, silver drums and a pile of garbage.

HVL testified the Landlord has been unable to insure the property without the Tenant having appropriate insurance coverage. In support, the Landlord submitted a letter from the insurer dated March 13, 2022, which states, in part:

...after reviewing several involved factors, the insurance companies have decided to not renew your policy due to faraway location, and residual concern over the settlement of tenant's home-based business...

In a type-written notice dated March 17, 2022, the Landlord asked the Tenant to stop using the rental property for her home-based business. A copy of the notice was submitted into evidence. HVL also testified the Tenant has been asked to obtain appropriate insurance coverage but has refused to do so.

The Landlord also submitted a letter dated March 30, 2022, which confirms cancellation of the insurance policy effective April 16, 2022.

HVL testified that the rental property is not currently insured.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the unchallenged documentary evidence and affirmed oral testimony, and on a balance of probabilities, I find:

Section 56 of the Act permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the Act. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the Act, which states:

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...

- (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.

In this case, I find that the Tenant, by operating a home-based business at the rental property and refusing to obtain or provide evidence of appropriate insurance coverage, has contributed to the Landlord's inability to insure the rental property. I find that this has seriously jeopardized the health or safety or a lawful right or interest of the landlord and has put the Landlord's property at significant risk.

Further, given the potential impact on the Landlord, I find it would be unreasonable or unfair to the Landlord to wait for a notice to end the tenancy under section 47 of the Act.

I find the Landlord has demonstrated an entitlement to an order of possession, which will be effective two (2) days after service on the Tenant. In addition, having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application, which I order may be deducted from the security deposit held, leaving a balance of \$625.00.

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 13, 2022

Residential Tenancy Branch