



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 by conference call as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for an early termination of the tenancy and an Order of Possession pursuant to section 56.

The Tenants did not attend this hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:39 am, in order to enable the Tenants to call into this teleconference hearing. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord testified the NDRP was served on the Tenants' door on May 11, 2022. The Landlord submitted a signed and witnessed Proof of Service on Form RTB-9 to corroborate his testimony on service of the NDRP on the Tenants. I find the Tenants were served with the NDRP in accordance with the provisions of section 89 of the Act. Pursuant to section 90 of the Act, I find the Tenants were deemed to have been served with the NDRP on May 14, 2022.

Preliminary Matter – Service of Landlord's Evidence on Tenants

The Landlord stated he submitted his evidence to the Residential Tenancy Branch ("RTB") but admitted he did not serve his evidence on the Tenants. Rule 10.3 of the *Residential Tenancy Branch Rules of Procedure* states:

10.3 Serving the notice of dispute resolution proceeding package

The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;
- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- *evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].*

[emphasis in italics added]

The Landlord admitted he did not serve his evidence on the Tenants prior to the hearing and, therefore, the Landlord failed to comply with Rule 10.3. Given the above, I declined to accept or consider any evidence of the Landlord except for the Proof of Service of the NDRP on Form RTB-9 which is only required to be filed with the RTB. However, I advised the Landlord that I would consider his oral testimony.

Issue to be Decided

Is the Landlord entitled to an early termination of tenancy and Order of Possession?

Background and Evidence

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

The Landlord stated the tenancy commenced on February 15, 2021, with a fixed term ending February 15, 2022, with rent of \$1,100.00 payable on the 15th day of each month. The Landlord stated the Tenants paid a security deposit of \$550.00. The Landlord confirmed he was holding the deposit in trust on behalf of the Tenants.

The Landlord testified the Tenants were putting him and other occupants of the residential property at serious risk. The Landlord stated that his two grandchildren, aged 2 and 9, live in the upper floor of the property. The Landlord stated he attempted to schedule an inspection of the rental unit with the tenants in early November 2021 but the Tenants kept deferring the inspection. The Landlord stated that, when he obtained access on November 23, 2021, he discovered the toilet was plugged and sewage had backed up into the rental unit. The Landlord testified he arranged for a plumber to clear the sewer line. The Landlord stated that, after clearing the obstruction, the plumber told him the blockage in the sewer line was caused by a key chain and a mask. The Landlord stated that two weeks later, the toilet backed up again and he had the plumber return. After clearing the sewer line, the plumber told him it was obstructed by two face masks.

The Landlord stated that, around December 2021, he discovered the Tenants had raised the top of the electric stove into the cleaning position and they were operating the elements to heat the rental unit. The Landlord stated he told the Tenants the stove could not be operated in this manner as it posed a severe fire hazard. The Landlord stated he has discovered the Tenants operating the electric stove in this manner two more times, the most recent being in April 2022. The Landlord stated the control panel and clock face of the electric range were partially melted from the heat. The Landlord stated that he talked to the male Tenant who admitted that the cabinets around the stove were too hot to touch from the heat produced by the electric elements while the top of the stove was raised. The Landlord stated he feared that, by operating the elements on the top of the stove while it was in the raised cleaning position, the heat could ignite the wood cabinets around the stove or ignite some other nearby item such as a paper towel.

The Landlord stated smoke was escaping from the rental unit last week. The Landlord stated he went to investigate the source of the smoke. The Landlord stated one of the Tenants let him into the rental unit and he found a pan of food that was "burned to a crisp" on the stove. The Landlord stated the smoke in the rental unit did not activate the smoke detector. The Landlord stated he examined the smoke detector and found the batteries were removed from it. The Landlord stated that during his inspection of the rental unit in January or February 2022, the smoke detector was working. The Landlord

stated there are burns on the carpeting, one of which is about 4" by 5" and burns on the countertop in the kitchen which are in the shape of cigarettes.

The Landlord submitted the tenancy should be ended as soon as possible as the Tenants have put his property at significant risk and they are seriously jeopardizing his safety and the safety of other occupants in the residential property. The Landlord submitted the Tenants pose a continuing risk of causing a fire in the rental unit based on the many occasions from improper use of the electric stove, operating the stove unattended and leaving burning materials on the carpets and countertops. Based on the foregoing, the Landlord submitted it would be unfair for him to have to wait for a One Month Notice for Cause to take effect.

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. In this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

The conditions that must be met for a tenancy to be ended early are set out in subsections 56(2) and (3) as follows:

Application for order ending tenancy early

- (2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that
 - (a) the tenant or a person permitted in the manufactured home park 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.

Residential Tenancy Branch Policy Guideline ("RTBPG") Number 51

[Expedited Hearings] provides guidance on a landlord's application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of that Policy are relevant to the Landlord's application:

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

The Landlord testified the Tenants were putting him and the other occupants of the residential property at risk, including his two grandchildren ages 2 and 9, who on the upper floor of the property. The Landlord stated that, around December 2021, he discovered the Tenants were operating the elements on the electric stove while the top of it was in the raised cleaning position. The Landlord stated he found the Tenants operating the stove with the top raised on two more times, the most recent being in April

2022. The Landlord stated the control panel and clock face of the electric range were partially melted from the heat. The Landlord stated he talked to the male Tenant who admitted that the cabinets around the stove were too hot to touch from the heat produced by the electric elements while the top of the stove was raised. The Landlord stated he feared that, by operating the elements on the top of the stove while it was in the raised cleaning position, the heat could ignite the wood cabinets around the stove or ignite some other nearby item such as a paper towel.

The Landlord stated that in the week prior to this hearing, he went to investigate the source of smoke that was coming from the rental unit. The Landlord stated he found a pan of burned food on the stove. The Landlord stated the smoke detector was not activated from the smoke. The Landlord stated that upon examination of the smoke detector, he found the batteries were removed from it. The Landlord stated that during his inspection in January or February 2022, the smoke detector was working. The Landlord stated there are burns in the carpeting, one of which is about 4" by 5" and cigarette burns on the countertop in the kitchen of the rental unit.

I find the Landlord's testimony to be credible and forthcoming. The Landlord expressed a fear the Tenants will cause a fire in the rental unit which may spread to the upper floor in which the Landlord and other occupants, two of whom are infants, are residing. I find the Tenants have breached subsections 56(2)(a)(ii) and 56(2)(iii) of the Act by seriously jeopardizing the health or safety or lawful right or interest of the Landlord and other occupants of the residential property as well as putting the Landlord's property at significant risk.

I also find that the repetitive nature of the Tenants' reckless use of the top of the electric stove for an improper and hazardous purpose, the evidence of burns on the carpets and countertops and the disabling of the smoke detector, demonstrate the Tenants pose a continuing risk of jeopardizing the safety of the Landlord and other occupants of the residential property as well as places the Landlord's property at significant risk of fire. As such, I find the Landlord has provided sufficient evidence to satisfy the requirement of section 56(b) that it would be unreasonable or unfair to the Landlord and other occupants of the residential property to wait for the Landlord to serve a One Month Notice to End Tenancy to take effect pursuant to section 47 of the Act.

Based on above, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached Order on the Tenants.

As the Landlord has been successful in his application, I order the Tenants pay the Landlord \$100.00 for the filing fee of the Application. Pursuant to section 72(2)(b), the Landlord may deduct the \$100.00 from the Tenants' security deposit of \$550.00. The Landlord must handle the remaining \$450.00 of the Tenants' deposit in accordance with the requirements of the Act.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenants. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is authorized to deduct \$100.00 from the Tenants' security deposit to cover the filing fee of the Landlord's application.

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 1, 2022

Residential Tenancy Branch