



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD. and [tenant name suppressed to protect privacy]

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 Tenant pursuant to section 72.

The Landlord's agent JD attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. During this hearing, the Landlord called one witness, JC.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:40 am in order to enable the Tenant 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 the Landlord and I were the only ones who had called into the hearing.

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

Preliminary Matter – Service of Dispute Resolution Documents

JD confirmed she served the Tenant with the notice of dispute resolution proceeding package and Landlord's supporting documentary evidence (collectively, the "NDRP

Package”) by registered mail on May 28, 2022. The Landlord submitted a Canada Post registered mail receipt with a tracking number in support. That Canada Post tracking number is referenced in the cover page of this decision. The Landlord also submitted a signed Proof of Service in form #RTB-9. Based on the foregoing, I find that the Tenant has 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 3(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 rental unit is an apartment suite inside a rental building owned by the Landlord.

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

- The tenancy commenced on July 1, 1992 and is month-to-month.
- Rent is \$1,025.00, due on the first day of each month.
- The Tenant paid a security deposit of \$272.50 and a pet damage deposit of \$272.50, which are held by the Landlord.

The Landlord submitted photographs showing the rental unit covered in garbage, filth, and clutter. The photographs include the living room, kitchen, dining room, bedroom, bathroom, hallway, and balcony areas of the rental unit.

JD testified that the photographs were taken on May 18, 2022, when she and a maintenance person, JC, conducted a regular inspection of the rental unit.

JD stated that the Landlord gave written notice to inspect the rental unit to the Tenant on May 16, 2022.

JD testified that when she and JC arrived on May 18, 2022, they noticed that there were flies in the hallway and a strange smell coming from the rental unit. JD stated they knocked on the door and there was no answer, so they used a master key to unlock the door. JD explained they were scared that something bad had happened inside the rental unit.

JD testified that, at first, they could not open the door, and they had to push very hard to open it. JD stated they realized there was a pile of garbage stuffed behind the door. JD testified there was so much garbage that they could not see the floor, and JC had to step onto the pile of garbage to go inside.

JD called JC to testify as a witness. JC stated that he had been working as a maintenance person for the rental building for 15 years. JC confirmed he attended at the rental unit with JD on May 18, 2022. JC stated that the rental unit was full of flies, and that the conditions were so bad he had to step outside to put on his mask before re-entering the rental unit.

JD stated that after she and JC had concluded their inspection of all units in the rental building, they ran into the Tenant. JD indicated that when they confronted the Tenant about the state of the rental unit, the Tenant “pretended” it was not a big deal.

JD testified that as at the date of this hearing, there had been no improvement to the condition of the rental unit. JD stated that the Landlord is very concerned because there are families living in the rental building, including the next-door neighbours who have young children.

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 JD and JC's testimonies, as well as the photographic evidence submitted by the Landlord, I am satisfied that an early end to the tenancy is warranted in the circumstances. I find the Tenant has caused significant garbage, filth, and clutter to accumulate inside the rental unit. I am satisfied that the unsanitary condition of the rental unit seriously jeopardizes the health or safety of other occupants in the building,

especially the tenants who live next door. I also find that the Landlord's property is put at significant risk for damage as a result of the garbage and filth. Accordingly, I find the Landlord has met the onus of proving that this tenancy should end early under sections 56(2)(a)(ii) and (iii) 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 other occupants to wait for a notice to end the tenancy under section 47 to take effect. I am satisfied that the extremely unsanitary condition of the rental unit poses an immediate and severe risk to the health and safety of other tenants. I find the Landlord has a duty to ensure the health and safety of the other occupants of the rental property. I further find that if the rental unit is not cleaned up promptly, there is an immediate and significant risk of damage to the Landlord's property caused by the garbage and filth. Therefore, I find it would be unreasonable and unfair for the Landlord and other occupants to wait for a notice under section 47 to take effect.

Having found the requirements in sections 56(2)(a)(ii), 56(2)(a)(iii) 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 \$272.50 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, July 5, 2022.

Pursuant to section 56(2), I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit on account of the filing fee awarded in this application. The balance of the Tenant's 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: July 05, 2022

Residential Tenancy Branch