



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1266530 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

On June 21, 2022, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.G. and J.D. attended the hearing as agents for the Landlord. Tenant T.C. attended the hearing, with J.T. attending as a witness for the Tenants. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

S.G. advised that he served each Tenant a Notice of Hearing and evidence package by posting them to the Tenants’ door on June 25, 2022, and the Tenant confirmed this service. Based on this undisputed evidence, I am satisfied that the Tenant was served the Notice of Hearing and evidence package, and that Tenant W.C. was deemed to have received his Notice of Hearing and evidence package three days after being posted. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

The Tenant advised that she served their evidence on July 12, 2022, by posting it to the Landlord's office door. J.T. apologized for the late service of evidence because it was her fault alone that this was not served, or submitted to the Residential Tenancy Branch, in time. She stated that she was assisting the Tenant and misunderstood the instructions. S.G. attempted to locate this evidence during the hearing but could not find it. Regardless, as this evidence was clearly served late, and not in accordance with the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 13, 2022, that rent was established at \$4,250.00 per month, and that it was due on the first day of each month. A security deposit of \$2,125.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

S.G. advised that on June 2, 2022, he was informed that approximately 100 police officers attended the property due to an incident that happened in the rental unit. When he showed up on scene, there were then approximately 30 to 40 police officers there. He stated that the police were there because he "should not have had certain people on the property", that there was a "criminal element" present, and that the police presence was due to activities of the Tenants or their guests. He testified that one officer stated that the Tenant was known to the police and that he should attempt to deal with the

matter by having the Tenants evicted. He submitted that a person living with the Tenants was arrested and taken away from the rental unit. He stated that it was necessary for the police to tear gas the rental unit, and as a result, nine windows were broken. He is unable to get a police report of the incident as it would take a substantial length of time. He stated that he is concerned for the safety and well-being of the neighbours and his staff.

J.D. advised that the property was blocked off for a substantial amount of time and that the police would not let staff leave the property. He confirmed that there were over 40 police officer present, including the ERT team. He submitted that a stolen vehicle was towed from the property.

The Tenant advised that she does not have a criminal record, that she is not known to police, and that the incident has nothing to do with her. She suggested that the incident may be related to the Landlord's property nearby as it was a grow op. As well, she stated that the rental unit also used to be a grow op. She also stated that there had been recent criminal activity in the vicinity.

She confirmed the police incident on June 2, 2022, and that the police were following someone "extremely dangerous." The Tenant acknowledged that she was not home, so she could only provide hearsay information about what transpired that day. She stated that her daughter was home when she heard a commotion, so she went outside to investigate. She then saw the police, who asked her if she saw anyone nearby trying to flee or enter the rental unit, and she stated that she had not. She did see a car in front of the rental unit with the door open, however. The daughter confirmed that there were approximately 30 police officers present.

The Tenant then testified that the police found the Tenant's sister and her own daughter behind the house, and they asked them if they saw anyone enter the rental unit. They informed the police that they had not. However, she stated that it was discovered that the sister's daughter had a warrant out for her arrest, so she was the person that was taken away, but this had nothing to do with the reason the police had attended the rental unit. The Tenant confirmed that these two individuals live in the rental unit.

The Tenant submitted that the police then made an announcement over the loudspeaker that was directed at the rental unit. She then provided contradictory testimony and stated that the police asked her daughter, her sister, and her sister's daughter if they knew of anyone, that lived in the rental unit, and if they were still in the

rental unit. She advised that the police eventually tear gassed the rental unit, but she is not sure why this was done.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants, or a person permitted on the residential property by the Tenants, have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

I find it important to note that the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I also note that the threshold of evidence required to justify an early end of tenancy Application is much higher than that of an Application for an Order of Possession based on a One Month Notice to End Tenancy for Cause.

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, and given the contradictory testimony and positions of the parties, I may need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, it is undisputed that the police attended on the property for a matter related to the rental unit on June 2, 2022, and that there was a significant police presence, including the ERT team. While the Tenant claimed that this incident had nothing to do with them or their guests, I note that the Tenant was not present at the time of this incident and that her testimony was just hearsay evidence as she was recounting what she was told to her by her daughter and her sister. As well, it is not clear to me why she would not have had these people attend the hearing to provide direct testimony about the circumstances of that incident. This causes me to attribute less weight to the accuracy and reliability of the Tenant's hearsay testimony.

Moreover, she acknowledged that her sister and her sister's daughter lived in the rental unit and that her niece was the person arrested on scene. While she alleged that the reason her niece was arrested was not related to the reason the police were on the property, I find that I am skeptical that this was merely a coincidence. Given the Tenant's varying and inconsistent testimony of what questions the police asked her daughter, her sister, and her niece, this also causes me to question the reliability of the Tenant's testimony.

Furthermore, given that there was substantial amount of police members on the property, including the ERT team, I find it reasonable to conclude that they were attending due to a serious incident. I do not accept that the police would surround the rental unit with that many officers, and launch multiple rounds of tear gas into it without a valid reason for doing so. I find the doubts I have about the Tenant's submissions cause me to give more weight to S.G. and J.D.'s testimony. As such, I prefer the Landlord's evidence on the whole. Consequently, I find it more likely than not that the police were present due to the actions of the Tenants and/or their guests, and that the arrest of the niece was related to this incident. I am satisfied that these actions posed a danger that would fall under all of the aforementioned categories.

The Landlord must also demonstrate that “it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 for cause” to take effect. Based on the consistent testimony of this incident, I am satisfied that the Tenants and/or their guests will continue to behave in a manner that endangers lives and property. Should the tenancy resume in this manner, there is no doubt that there would be a genuine concern for the ongoing safety of the property, of any neighbours, or of any persons that may attend the rental unit or the property.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlord has provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to the offsetting provisions of Section 72 of the *Act*, I permit the Landlord to retain \$100.00 from the security deposit to satisfy this debt.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed 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: July 12, 2022

Residential Tenancy Branch