



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT HOUSING AND HEALTH
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on June 23, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on July 25, 2022 as a teleconference hearing. Landlord's Agents M.L., A.P. and the Landlord's witness F.P. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agents, the Landlord's witness, and I were the only persons who had called into this teleconference.

The Landlord's Agent testified the Application and documentary evidence package was served to the Tenant by posting the documents to the Tenant's door on July 13, 2022. The Landlord provided a witnessed proof of service and a picture of the documents attached to the Tenant's door in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence three days later, on July 16, 2022. The Tenant did not submit documentary evidence in response to the Application.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agents testified that the tenancy began on February 1, 2019. Currently, the Tenant pays rent in the amount of \$375.00 which is due to the Landlord on the first day of each month. The Landlord's Agents stated that the Tenant paid a security deposit in the amount of \$250.00 which the Landlord continues to hold. The Landlord's Agent stated that the Tenant continues to occupy the rental unit.

The Landlord stated that he is seeking to end the tenancy early as the Tenant has;

"significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the Landlord's property at significant risk."

The Landlord's Agents stated that the Tenant has removed their smoke detector in the rental unit which is impacting the fire safety monitoring system at the rental property. The Landlord's Agents stated that the Tenant as been provided with several written warnings to replace the smoke detector, or have the Landlord do so, to ensure proper functioning of the fire system, and also for the safety of the other occupants. The Landlord provided a copy of the written warnings in support.

The Landlord's Agents stated that the Tenant continues to refuse to comply with the Landlord's requests to have the smoke detector re-installed in the rental unit, which has resulted in the Fire Department becoming involved and imposing a mandatory 24 hour fire protection watch program in lieu of the Tenant not having a functioning smoke detector.

The Landlord's Agents stated that this has impacted their daily operations as it requires additional staff to monitor the building every 15 minutes to ensure there are no fires, given the monitoring panel has been impacted due to the disconnection of the Tenant's smoke detector.

The Landlord made Fire Inspector F.P. available who states that the Tenant's non compliance regarding the disconnection of the smoke detector is an immediate and severe safety risk, which puts all occupants at the rental property at extreme risk. F.P. stated that due to the fact that the fire safety panel is in trouble mode, it creates a delay in communicating with the Fire Department, should there be a fire at the rental property. F.P. stated that this is a direct breach of the Fire Code.

The Landlord's Agents stated that they have served the Tenant with a One Month Notice to End Tenancy, however, given the circumstances, the Landlord wishes to end the tenancy early as the Tenant poses a sever risk to the Landlord, other occupants and to the property by refusing to have the smoke detector installed in the rental unit. If successful, the Landlord is also seeking the return of the filing fee.

Analysis

Based on the unchallenged documentary evidence and 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 that 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 had 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 landlords 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.

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord's unchallenged evidence and testimony indicated that the Tenant has been provided several written warnings relating to the removal of the Tenant's smoke detector in the rental unit. Despite the warnings, the Tenant has not taken action to re-install the smoke detector, or have the Landlord do so. I find that this poses a significant risk to other occupants at the rental property. If there were to be a fire in the rental unit, the Tenant, other occupants, the Landlord, and the Fire Department would not be notified in a timely manner. I find that the Tenant has caused a situation which I find to be high risk, given their noncompliance with the Landlord's multiple requests to comply with the Fire Code.

I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the Landlord's property at significant risk. Further, I find it would be unreasonable or unfair to the Landlords 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.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service 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: July 25, 2022

Residential Tenancy Branch