



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT
SERVICE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 24 minutes. The landlord's two agents, landlord MF ("landlord's agent") and "landlord BB," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. and ended at 9:54 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's two agents and I were the only people who called into this teleconference.

The landlord's two agents confirmed their names and spelling. The landlord's agent confirmed the name and spelling of the tenant. The landlord's agent provided his email address for me to send a copy of this decision to the landlord after the hearing.

The landlord's agent confirmed that is the property manager for the landlord company ("landlord") named in this application. He said that he had permission to speak on the landlord's behalf at this hearing. He stated that the landlord owns the rental unit. He confirmed the legal name of the landlord and the rental unit address. He identified himself as the primary speaker for the landlord at this hearing.

Landlord BB confirmed that is the senior property manager for the landlord.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“*Rules*”) does not permit recording of this hearing by any party. At the end of this hearing, both landlord agents separately affirmed, under oath, that they did not record this hearing.

I explained the hearing process to the landlord’s two agents. They had an opportunity to ask questions. They confirmed that they were ready to proceed with this hearing. They did not make any adjournment or accommodation requests.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on July 5, 2022, and a notice of hearing was issued by the RTB on July 21, 2022. The landlord was required to serve that notice, the application, and all other required evidence to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord’s agent testified that the tenant was served with the landlord’s application for dispute resolution hearing package on July 22, 2022, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and the landlord’s agent confirmed the tracking number verbally during this hearing. In accordance with RTB *Rules* 10.2 and 10.3 and sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s application on July 27, 2022, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to an early end to tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the landlord’s documentary evidence and the testimony of the landlord’s two agents at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

The landlord’s agent testified regarding the following facts. This tenancy began on August 1, 2020. A written tenancy agreement was signed by both parties. Monthly rent in the current amount of \$1,258.00 is payable on the first day of each month. A security

deposit of \$620.00 was paid by the tenant and the landlord continues to retain this deposit in full. The tenant continues to reside in the rental unit.

The landlord's agent stated the following facts. The landlord completed quarterly inspections of the rental unit. The tenant's rental unit is not up to rental standards, as it is cluttered, messy, and there is hoarding. The landlord provided four breach letters to the tenant on July 7, 2021, March 25, 2022, June 15, 2022, and June 27, 2022, and copies were provided for this hearing. After the last breach of June 27, 2022, the tenant was given a deadline of July 5, 2022, to comply. The tenant has repeatedly had a messy rental unit. After the first breach of July 7, 2021, the tenant cleaned up the rental unit and complied by the July 14, 2021 deadline. Child Services was involved in that first breach. The landlord did not conduct any inspections due to the covid-19 pandemic from July 15, 2021, until the second breach was noted on March 25, 2022. The current state of the rental unit is a fire hazard, and the tenant was given a two-week timeline. The landlord inspected the rental unit, and it was not clean. The tenant has not complied with the Act to keep up a proper rental unit condition. On June 24, 2022, the landlord inspected the rental unit and provided photographs from #1 to 11, for this hearing. On July 5, 2022, the deadline for the tenant to clean up the rental unit, the landlord provided photographs #1 to 6, after the 10-day breach. The photographs show that the tenant made no effort to bring the rental unit back to a proper rental state. The annual fire inspection occurred at the rental unit on July 14, 2022, and the fire inspector said that the rental unit was a fire hazard and needed to be brought back to a rental state. The landlord did not provide a copy of this fire department report. No One Month Notice to End Tenancy for Cause ("1 Month Notice") was provided to the tenant, as the landlord went straight to file this application for an early end to tenancy. The tenant has kids in the rental unit, and it is fire hazard and a health risk. The landlord cannot wait for a 1 Month Notice to take effect because there are health and fire hazards and damage to the landlord's property.

Landlord BB testified regarding the following facts. This has been an ongoing issue. The landlord completed recent rental unit inspections. There was an order to comply from the fire department saying that the landlord could be issued fines and suffer financial losses. The order was provided to the landlord sometime after the July 14, 2022, inspection date but the landlord was unable to provide a copy for this hearing because it was past the evidence deadline to submit. The landlord took photographs of the rental unit on two occasions. On June 24, 2022, the landlord's agent inspected the rental unit with the landlord's caretaker, who took photographs. On July 5, 2022, landlord BB inspected the rental unit with the landlord's caretaker, who took photographs.

Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (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...*

On a balance of probabilities and for the reasons stated below, I find that the tenant seriously jeopardized the health, safety, and lawful rights and interests of the landlord and other occupants at the residential property.

The tenant did not appear at this hearing to provide affirmed testimony and the tenant did not submit any documentary evidence for this hearing.

I accept the affirmed, undisputed testimony of the landlord's two agents at this hearing and the undisputed documentary evidence submitted by the landlord.

The landlord's two agents inspected the condition of the rental unit recently on June 24, 2022 and July 5, 2022, and provided photographs of same. The photographs show the deplorable condition of the rental unit, including rotting and molding food inside the refrigerator, stuck to pots, and all over the kitchen; food and pots piled all over the kitchen stove, counters, and sink; garbage, clothing, kids' toys and seats, and other items piled high all over the rental unit, including the bedroom, kitchen, and hallways; no sign of reasonable ingress or egress to the rental unit; and a significant amount of clutter all over the rental unit. I find that the condition of the rental unit causes serious health and safety risks for all occupants at the residential property and jeopardizes the lawful rights and interests of the landlord.

I also find that the landlord's application meets the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord provided sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to take effect.

I find that the landlord provided sufficient documentary and testimonial evidence regarding the urgency and seriousness of this situation. The landlord provided four breach letters from July 2021 to July 2022, documenting the unsafe condition of the rental unit, references to the *Act*, providing the tenant with deadlines to comply, and warning that notices to end tenancy could be issued. The landlord provided 17 photographs of the rental unit taken recently on June 24, 2022 and July 5, 2022, showing the unclean and dangerous condition of the rental unit. The landlord's two agents provided affirmed, undisputed testimony that the rental unit is a fire and health hazard for the tenant and her children. The landlord's two agents provided affirmed, undisputed testimony that the landlord could incur financial fines and losses, due to the fire department's order to comply after the recent July 14, 2022 inspection, requiring the rental unit to be brought back into a rentable, safe and clean state.

I accept the undisputed evidence of the landlord that the tenant left her rental unit in a deplorable condition since July 2021, which became worse since March 2022, and more recently in June and July 2022. I accept the undisputed evidence of the landlord that the tenant has not moved out and she has not corrected the fire, health, and safety hazards in the rental unit, since the landlord's inspections or the fire department visit in June and July 2022. The tenant has not responded to or disputed this application filed by the landlord on July 5, 2022.

Accordingly, the landlord's application for an early end to tenancy is allowed. The landlord is granted an order of possession effective two (2) days after service on the tenant.

As the landlord was successful in this application, I find that it is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's application is allowed. I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant 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.

I order the landlord to retain \$100.00 from the tenant's security deposit of \$620.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of \$520.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: August 09, 2022

Residential Tenancy Branch