



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 56 for the early end of the tenancy; and
- return of its filing fee pursuant to s. 72.

This matter was adjourned at the Tenants request on August 18, 2022 and scheduled to today’s date for hearing.

V.R. appeared as counsel for the Landlord. G.V. and M.M. appeared as agents for the Landlord. S.P. appeared as the Tenant. She was joined by C.V., who acted as support and provided submissions on behalf of the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the hearing on August 18, 2022, I was advised by Landlord’s counsel that the Tenant was served with the Landlord’s application and evidence on July 29, 2022, which was posted to the Tenant’s door. The Tenant acknowledges receiving the Landlord’s evidence on July 30, 2022, though says it was slid under her door. I find that the Landlord served its application and evidence on the Tenant in accordance with s. 89 of the *Act*.

Preliminary Issue – Adjournment Request

The Tenant requested a second adjournment on the basis that she obtained her materials from her former advocate the day before the hearing. The Landlord disputed the adjournment request given the nature of the allegations, which include allegations that the Tenant assaulted another tenant and her or her guests willfully destroyed the Landlord's property.

This matter has previously been adjourned. In my interim reasons, I emphasized that the Tenant take steps to obtain her file materials and that she be prepared to proceed at the rescheduled hearing. I have little doubt that the Tenant would prefer that this matter be adjourned to some date in the far-off future. However, determining whether an adjournment should be granted requires the consideration of potential prejudice to the parties. The Tenant has had time to prepare herself for the hearing. She admits she was served with the materials on July 30, 2022.

I find that further delay of this matter would be prejudicial to the Landlord, who has filed for an expedited hearing. I agree with the Landlord that the allegations, though unsubstantiated at the outset of the hearing, are of a significant nature. The circumstances warrant timely resolution of the dispute. The Tenant's request for a second adjournment was denied.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession without issuing a notice to end tenancy?
- 2) Is the Landlord entitled to the return of its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant began to occupy the rental unit in 2020.
- Rent of \$650.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$500.00 in trust for the Tenant.

No written tenancy agreement was put into evidence. I was advised by the Landlord's representatives that the subject residential property has 50 rental units of which 15 are tenanted.

Landlord's counsel argued that the Tenant poses a risk to the property and other tenants at the residential property. Landlord's counsel and its agents allege that the Tenant is involved in trafficking illicit substances from the rental unit. G.V. testified that a video camera was installed in the hallway overlooking the Tenant's rental unit in May 2022 and that the camera has captured thousands of images of individuals coming and going from the rental unit staying for approximately 7 minutes.

I was advised by Landlord's counsel that another tenant was evicted for trafficking illicit substances from their rental unit and I was directed to a decision in the Landlord's evidence dated July 11, 2022 respecting the other tenant. It was argued that the Tenant and the evicted tenant worked together in the trafficking of illicit substances.

The Landlord's evidence includes an undated and unsigned statement from an individual I understand works for the Landlord. In the statement, it discusses how the local MLA attended the residential property with the RCMP. I am told by the Landlord that there is a severe housing shortage in the local community. The statement describes how the MLA contacted the employee and made it clear in no "uncertain terms that the RCMP are aware of the significant drug trafficking that's going on in the building" and specifically cited the Tenant and the other tenant as the alleged perpetrators.

The Tenant denies trafficking illicit substances and emphasized that the traffic near her rental unit is unwanted. The Tenant emphasized that her rental unit has no lock and has had no lock for 3 years. The Tenant testified to people breaking into her rental unit. I was further advised by the Tenant that there has, until recently, been no locks for the doors entering the building. The Tenant argued that the Landlord is not diligent in repairing her rental unit.

The Landlord's representatives allege the various individuals have damaged the property. The Landlord's evidence includes photographs of fire damage to a stairwell, doors that have been force open, as well as photographs of what appears to be forced entry into the Tenant's rental unit. G.V. testified that the Tenant had forced her way into her own rental unit on July 1, 2022 when the RCMP. I am told the Tenant lost her keys on that occasion, which prompted her to force entry.

The Tenant confirmed that she did force entry into her rental unit. The Tenant further confirmed the RCMP were in attendance but argued that they did not stop her from forcing entry and wished her luck.

Landlord's counsel advised that the Tenant assaulted another tenant that lives on the same floor. The Landlord's evidence includes a statement from the other tenant, M.J., which is dated July 27, 2022. The statement describes an alleged incident that is said to have occurred on July 1, 2022 in which the Tenant "broke a piece of door casing off the wall and threw the casing at [her], hitting [her] in the leg." M.J.'s statement indicates that casing hit her leg which caused her leg to bleed. M.J. finally states that she called the RCMP and that she filed assault charges on July 1, 2022. Landlord's counsel directed me to a screenshot of court services online search indicating that the Tenant had been charged in relation to the incident that is alleged to have occurred on July 1, 2022.

The Tenant confirms having been charged but denies that she threw anything at the other tenant. The Tenant argued that the other tenant had, in fact, assaulted her. The Tenant described a level of conflict between her and M.J., including instances in which M.J. and her daughter C.J. attempted to kick in the Tenant's door and another incident that is said to have occurred outside the building on or about July 25, 2022 between the Tenant and C.J..

The Tenant's support worker advised that she attends the rental unit and that she has observed a marked drop in activity within the residential property after the locks into the building have been repaired. She further testified that the rental unit is in a terrible state of repair, including water leaking through electrical fixtures and mould. The Tenant's support also argued that the Landlord's evidence is largely circumstantial and does not clearly link the Tenant or her guests to the damages to the property.

Analysis

The Landlord seeks an order of possession without issuing a notice to end tenancy. A landlord may end a tenancy early under s. 56 of the *Act* where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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,

- 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, which are set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between ss. 47 and 56 is that under s. 56(2)(b) a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline #51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

I have some concerns with respect to the quality of the Landlord's evidence regarding the allegation that the Tenant is involved in trafficking drugs. Section 75 of the *Act* is clear that the formal rules of evidence do not apply to proceedings before the Residential Tenancy Branch. The formal rules regarding the admissibility of evidence are generally not applicable because Residential Tenancy Branch hearings are conducted on a summary basis where the formalism of a court would prevent our ability to adjudicate matters in timely and efficient manner.

However, the Landlord's evidence includes an undated statement from an individual who's name is redacted alleging they had a phone call with an MLA who is said to have received information from the RCMP regarding suspected drug trafficking from the Tenant's rental unit. The statement cannot be attributed to an individual. It does not contain direct evidence. Rather, it details an allegation told to this unnamed individual by someone else who heard that the Tenant was trafficking drugs after they spoke with the police. Though the formal rules of evidence do not apply, the statement is unattributed and is, at best, double hearsay. To rely on a statement of that nature would be unfair.

The Landlord's evidence includes alleged conduct regarding another tenant who was evicted by virtue of the decision dated on July 11, 2022. These include photographs of

individuals coming and going from the other tenant's rental unit and a log of activity of people coming and going from the other rental unit. The Landlord argued that the other tenant and the Tenant were associates in crime. That is not clear to me based on the evidence before me. The other tenant's conduct is not relevant to whether the Tenant's conduct warrants ending the tenancy early.

I make these comments because I place little weight in the allegations that the Tenant is trafficking illicit substances from her rental unit. This is specifically denied by the Tenant. G.V. testified to thousands of pictures of people coming and going from the Tenant's rental unit. Some photographs from the hallway in front of the Tenant's door were put into evidence. However, the Landlord's evidence clearly shows that it is blurring the lines between the Tenant's conduct and the conduct of people coming and going to the other rental unit. The Tenant is responsible for her guests and people she permits onto the property, not those that are permitted onto the property by other tenants. It is not clear to me from the Landlord's evidence that the general damage to the property is attributable to the Tenant or persons permitted onto the property by the Tenant.

Having said all of this, the Landlord's agent testified that the Tenant broke into her own rental unit in front of the RCMP. The Tenant confirmed having done so. I find that the wilful destruction of the door and lock by the Tenant constitutes extraordinary damage to the Landlord's property. The Tenant admits to vandalism in this instance and provides no rationale for breaking into her rental unit. Policy Guideline #51 is clear that instances of vandalism warrant the application of s. 56. I find that it would be unreasonable and unfair to the Landlord to wait for a one-month notice to end tenancy to take effect under s. 47 as the Tenant has admitted to the wilful destruction of Landlord's property.

I find that the Landlord is entitled to an order of possession under s. 56 and shall receive that order.

Given my findings above, I make no comments with respect to the Tenant's alleged assault of M.J. as it is unnecessary to do so.

Conclusion

The Landlord is entitled to an order of possession pursuant to s. 56 of the *Act* based on the admitted conduct of the Tenant. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord was successful in its application. I find that it is entitled to the return of its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Landlord withhold \$100.00 from the Tenant's security deposit in full satisfaction of its filing fee.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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 23, 2022

Residential Tenancy Branch