



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:56 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. Landlord RH (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was assisted by advocate RT. The landlord represented landlord GT. 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, his advocate and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The landlord attached the notice of hearing and the evidence (the materials) to the rental unit's door on May 18, 2022. The landlord attached one package for each tenant.

Based on the landlord's convincing testimony, I find the landlord served the materials in accordance with section 89(2)(d) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by attaching to the door, on the 3rd

day after it is attached. The tenants are deemed to have received the materials on May 21, 2022, in accordance with section 90(c) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Issues to be Decided

Are the landlords entitled to:

1. an order for early termination of the tenancy?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on October 01, 2021 and the tenants continue to occupy the rental unit. Monthly rent is \$750.00, due on the first day of the month. The tenancy agreement was submitted into evidence.

The landlord stated that on May 03, 2022 he served a notice to end tenancy for unpaid rent to the tenants and tenant JW kicked the landlord. The landlord needed medical care because of the assault and the police are investigating tenant JW. The landlord provided two police file numbers (recorded on the cover page of this decision).

The landlord submitted this application on May 07, 2022.

Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

(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.

Residential Tenancy Branch Policy Guideline 51 states:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to

wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the undisputed and convincing testimony offered by the landlord, I find, on a balance of probabilities, pursuant to section 56(2)(a)(ii) of the Act, that tenant JW seriously jeopardized the health and safety of the landlord by physically assaulting the landlord on May 03, 2022.

If the landlords issued a notice for cause under section 47 of the Act, the landlords could not end the tenancy earlier than one month after the date the notice is received by the tenant. I find that pursuant to section 56(2)(b), it would be unreasonable for the landlords to wait to end the tenancy by issuing a notice for cause due to the significant threat to the health and safety of the landlords caused by the tenants.

I grant an order of possession effective two days after service on the tenants, pursuant to section 56(2) of the Act.

As the landlords are successful in this application, the landlords are entitled to recover the filing fee.

Conclusion

Pursuant to section 56(2) of the Act, I grant an order of possession to the landlords effective **two days after service of this order**. The landlords are provided with this order in the above terms and the tenants must be served with this order. 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.

Pursuant to section 72(1), I grant a monetary order in the amount of \$100.00 to the landlords. The landlords are provided with this order in the above terms and the tenants must be served with this order. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 18, 2022

Residential Tenancy Branch