



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 landlord 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 9:57 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 QC (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. Witness SJ also attended. 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 witness 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 July 26, 2022. The landlord attached one package for each tenant. The landlord submitted a witnessed proof of service (RTB form 9) into evidence.

Based on the landlord's convincing testimony and the proof of service form, 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 July 29, 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

Is the landlord 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 party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the ongoing tenancy started on February 01, 2017. Monthly rent is \$800.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$400.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord stated the tenants put the landlord's property at significant risk and jeopardized the health and safety of other tenants. The landlord inspected the rental unit on June 02, 2022 and noticed that the rental unit was in complete disrepair because the tenants had excessive clutter. The landlord submitted photographs taken on June 02, 2022 showing excessive clothing and personal objects covering the rental unit's floor, abandoned food on the kitchen's counter and garbage outside the garbage bin. The landlord testified the excessive clutter and garbage outside the garbage bin is a fire hazard and caused a pest infestation in the rental unit.

Witness SJ is the next-door neighbour. The respondents and witness SJ share the entry hallway. SJ said the tenants leave their clothing and garbage in the entry hallway and their rental unit has a pest infestation because of the garbage that the tenants abandon

in the entry hallway. SJ's roommate had to go to the hospital because of the rats in the rental unit.

The landlord submitted this application on June 28, 2022 because he did not know how to submit the application and needed help to submit it.

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 and witness SJ and the photographs, I find, on a balance of probabilities, pursuant to section 56(2)(a)(ii) of the Act, that the tenants have seriously jeopardized the health and safety of other occupants of the rental building by having excessive clutter covering the rental unit's floor, abandoning food on the kitchen's counter and garbage in the shared entry hallway and outside the garbage bin in June 2022. I find the tenants' actions are a significant fire and health hazard.

If the landlord issued a notice for cause under section 47 of the Act, the landlord 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 landlord to wait to end the tenancy by issuing a notice for cause due to the significant threat to the health and safety of other occupants of the rental building and the landlord caused by the tenants.

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

As the landlord is successful in this application, the landlord is entitled to recover the filing fee.

Conclusion

I grant an order of possession to the landlord effective **two days after service of 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(2)(b), the landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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 15, 2022

Residential Tenancy Branch