



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

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

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

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by its agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave evidence that they served the tenant personally with the hearing package. A Proof of Service form signed by the tenant confirming receipt on August 26, 2022 was submitted into evidence. Based on the undisputed evidence I find the tenant duly served with all materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end of tenancy and order of possession?
Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This periodic tenancy originally began on September 15, 2017. The current monthly rent is \$884.31 payable on the first of each month. A security deposit of \$475.09 was collected and is still held by the landlord. The rental unit is a suite in a multi-unit building of approximately 77 units.

The landlord submits that the rental unit is in a condition that causes health and safety risks for the tenant as well as neighbors and other occupants of the building. The unit is filled with raw garbage including used sanitary products, human waste, foodstuffs, and other biological materials. The landlord submitted several photographs of the suite into evidence and described the overwhelming odor emanating from the unit palpable in the hallways and adjacent units.

There was a previous hearing in regards to this tenancy under the file number on the first page of this decision, exactly one year ago on September 2, 2021, where the parties entered into a settlement agreement. A term of that agreement was that the tenant would bring the rental unit up to reasonable cleanliness standard.

The landlord submits that the condition of the rental unit is not simply unclean but causes significant health risks for all occupants of the building as well as attracting vermin, insects and bacteria and disease. The landlord says it would be unfair and unreasonable to the other occupants of the building to allow this tenancy to continue.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- 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;
- engaged in illegal activity that 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

it would be unreasonable, or unfair to the landlord, the tenant 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.

Based on the evidence of the landlord, including the testimony of their witness and documentary materials, I find that the landlord has provided sufficient evidence to show there is a serious jeopardy to the health, safety and lawful rights of other occupants of the property as well as a significant risk to the property itself due to the condition of the rental suite.

I find that this is not simply a case where the rental unit is untidy or the tenant has a different standard of cleanliness but one where the volume and nature of the biological waste accumulating in the rental unit poses a real and unreasonable risk to the health of anyone attending the rental property. I am satisfied with the evidence of the landlord including their multiple photographs and vivid description of the noxious odors that this tenancy poses a serious jeopardy to the other 76 units in the building.

I am satisfied, on a balance of probabilities, that the tenant's failure to maintain the rental unit in a reasonable state and allowing biological refuse to pile up and accumulate in the rental unit poses an inherent risk to the health and safety of other occupants of the building.

I accept that it would be unfair and unreasonable to wait for a notice to end tenancy to take effect as the combination of the biological waste and the hot summer temperatures have increased the risk to the health of others and made living in the rental property hazardous.

I therefore issue an Order of Possession to the landlord pursuant to section 56 of the *Act*.

As the landlord was successful in their application, they are entitled to recover their filing fee from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective **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.

The security deposit for this tenancy is reduced by \$100.00 from \$475.09 to \$375.09.

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: September 2, 2022

Residential Tenancy Branch