



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

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

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. 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 represented by counsel. The landlord called witness S.G. who affirmed to tell the truth.

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, counsel, witness and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution 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."

The landlord confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

The landlord testified that the tenants were served with the application for dispute resolution and evidence via posting on August 24, 2022. A witnessed proof of service document stating same was entered into evidence. I find that the above documents were served in accordance with s. 89(2)(d) of the *Act*.

Counsel submitted that after this application for dispute resolution was filed by the landlord, he was retained. Counsel submitted that he indexed the evidence previously served by the landlord and that this evidence was re-served on the tenants via process server on September 14, 2022 and was emailed to the tenants on September 14, 2022. Counsel submitted that he believed the only new documents included in the September 14, 2022 package were a copy of the tenants' drivers license and tenancy agreement.

Rule 10.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

Upon review of the indexed evidence, it is clear that other additional evidence other than the drivers' licenses and tenancy agreement were served in the September 14, 2022 package as they are dated after August 24, 2022. Pursuant to Rule 10.2, I exclude all evidence not served on August 24, 2022.

Preliminary Issue- Naming of Parties

Counsel submitted that tenant C.N. goes by two different spellings of her first name. Counsel submitted that the tenant's driver's license spells tenant C.N.'s first name one way and tenant C.N.'s work identification spells it another way.

Counsel submitted that tenant M.C.'s last name was spelt incorrectly in this application for dispute resolution. Counsel submitted the correct spelling of tenant M.C.'s name

Pursuant to counsel's undisputed submissions and section 64 of the *Act*, I amend the application for dispute resolution to state both versions of tenant C.N.'s first name and the correct spelling of tenant M.C.'s last name.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and the landlord's witness and counsel's submission, not all details of their respective testimony and submissions are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on January 1, 2022 and is currently ongoing. Monthly rent in the amount of \$2,800.00 is payable on the first day of each month. A security deposit of \$1,400.00 and a pet damage deposit of \$600.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties.

Counsel submitted that the landlord is seeking an order of possession pursuant to section 56 of the *Act* because the tenants have put the landlord's property at significant risk, caused extraordinary damage to the residential property, and have engaged in illegal activity that caused or is likely to cause damage to the landlord's property.

The landlord testified that issues with the tenants started the month they moved in, January 2022. The landlord testified that on January 18, 2022 she received a text message from a realtor informing her that there had been a car fire in front of the subject rental property and that a fence at the subject rental property was damaged. The January 18, 2022 text message was entered into evidence.

The landlord testified that after receiving the above text she called the tenants right away, but they did not respond. The landlord testified that after three calls without a response tenant C.N. answered the phone and told the landlord that the car fire was no big deal and that the car belonged to her friends who were visiting. The landlord testified that tenant C.N. told her that the friends visiting were boyfriend and girlfriend and that they got in a fight and one set something on the car on fire.

The landlord testified that on May 28, 2022 the landlords attended at the subject rental property and were ashamed to see that the lawn was not mowed, even though the landlords bought a new lawn mower for the subject rental property. The landlord testified that prior to attending on May 28, 2022 she provided the tenants with notice that she would need access to the garage. The landlord testified that when she and her husband entered the garage, they found it full of garbage and rat poo. The landlord testified that it looked like the garbage had been there for a long time. Photographs of the garbage strewn all over the garage were entered into evidence.

The landlord testified that on May 29, 2022 she texted tenant C.N. about the garage garbage and asked her to clean it up. The May 29, 2022 text message was entered into evidence.

The landlord testified that on August 3, 2022 she started texting tenant C.N. about unpaid rent. The August 3, 2022 text requesting payment was entered into evidence. The landlord testified that the tenant texted the landlord on August 6, 2022 and informed her that tenant M.C., tenant C.N.'s husband, separated from her on May 27, 2022, broke windows at the subject rental property and assaulted her.

The landlord testified that the tenant did not tell her about the broken windows when they were broken only on August 3, 2022. The landlord entered into evidence three pictures of broken windows; the landlord testified that five windows in total were broken at the front of the house.

The landlord testified that she has since had telephone calls with tenant N.C. who said she would fix the windows; however, the windows remain broken. The landlord testified that the five broken windows have caused extraordinary damage to the subject rental

property and she is very concerned that more damage will be caused the longer the tenant(s) reside in the unit.

The landlord testified that in the August 6, 2022 text from tenant N.C., N.C. informed her that she had a roommate not listed on the tenancy agreement. The landlord testified that this was the first time she learned that the tenants had a roommate. The landlord testified that the tenant never sought permission to have roommates.

The landlord testified that she inspected the subject rental property on August 26, 2022 and found that five windows are smashed, the doorbell has been ripped off, the front door lock is broken and does not work, blinds are missing, a bedroom door frame is broken, a cabinet in the bathroom has been knocked down, there is garbage in the garage and it looks like the garage wall has been smashed by a bat. The landlord testified that before the tenants and their guests do more damage, they need to be evicted.

The landlord testified that she was approached by neighbours of the subject rental property and was told of many police disturbances and the broken windows. The landlord testified that a neighbour of the subject rental property told her the windows were smashed on June 28, 2022. The landlord testified that the tenants are negatively affecting the quiet enjoyment of the entire neighbourhood.

The landlord testified that the tenants have not paid rent for August or September 2022.

The landlord called witness S.G. (the "witness"). The witness testified that she lives across the street from the subject rental house and has resided there for 31 years. The witness testified that tenant M.C. first introduced himself on December 27, 2022 and told the witness that he, his wife and his kids were moving into the subject rental property.

The witness testified that on January 15, 2022, close to 11:00 p.m., she heard a loud boom and when she looked outside she saw a car on fire but then realized that a basket on top of the car was on fire and a butane canister rolled out of the basket. The witness testified that she called the police and they attended.

The witness testified that on January 26, 2022 she heard rumblings from other neighbours about the large amount of noise and comings and goings from the subject rental property.

The witness testified that in May 2022 the owner of the car that was set on fire moved into the subject rental property.

The witness testified that on May 27, 2022 from her window she witnessed a vehicle at the subject rental property trying to back out and tenant C.N. jumped at the back of the vehicle and tried to stop it from leaving. The witness testified that it looked like a domestic dispute.

The witness testified that on June 17, 2022 she saw a black truck pull in front of the subject rental property and it was immediately surrounded by three police cars.

The witness testified that on June 28, 2022 she heard screaming and yelling, smashing and crashing coming from the subject rental property so she called the police. The witness testified that numerous neighbours also called the police and they attended and were at the scene over an hour and towed one vehicle. The witness testified that when she looked at the subject rental house, she saw that the windows were broken and that tenant N.C.'s car also had damage.

The witness testified that on June 30, 2022 at 12:30 p.m. she heard a siren and saw police and an ambulance attend at the subject rental property. The witness testified that tenant C.N. was taken out in a stretcher.

The witness testified that on July 5, 2022 police attended at the subject rental property and tenant C.N. was lead out in cuffs. The witness testified that tenant C.N. was very combative and was using lots of language. The witness testified that the police eventually wrestled tenant C.N. into a police car. The witness testified that she spoke with a police officer who told her that tenant C.N. was taken to a hospital. The witness testified that the police returned later that day looking for the tenant as she had escaped the hospital and walked home. The witness testified that the police took tenant C.N. into custody again.

The witness testified that on July 13, 2022 four police cars attended at the subject rental property and took tenant C.N. into custody.

The witness testified that on July 16, 2022 two police cars attended at the subject rental property, spoke with tenant C.N. and then left.

The witness testified that she recorded the above information and information about what cars visit the subject rental property because she was always told “if you see something write it down”. The witness testified that she has a habit of taking notes.

The witness testified that in the last week it has been insane the amount of cars coming and going from the subject rental property at all hours of the day and night. The witness testified that she can guess what’s going on there but does not have proof. The witness testified that lots of neighbours have purchased security systems and are afraid to walk past the subject rental property.

The witness testified that tenant C.N. is the only constant person who lives at the subject rental property and that tenant M.C. lived there at the start of the tenancy but has since left and that there has been a large variety of other people moving in and out of the subject rental property.

Counsel submitted that the subject rental property has experienced significant damage and is at risk for more damage while the tenants reside in the subject rental property.

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. 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

Based on the undisputed testimony of the landlord and the witness, the August 6, 2022 text message from the tenant and the photographs of the broken windows, I find that tenant M.C. intentionally broke five windows at the subject rental property causing extraordinary damage to the subject rental property, contrary to section 56(2)(a)(v) of the *Act*. I find that intentionally smashing five windows is above and beyond regular damage that may occur during a tenancy.

I accept the undisputed testimony of the witness that numerous people come and go from the subject rental property, some of whom have lit items on fire on cars. I find that allowing people at the subject rental property who use arson for dispute resolution put the landlord's property at significant risk as does allowing people to come and go at all hours of the day and night.

I accept the landlord's undisputed testimony that the tenants or person permitted on the property by the tenants have also caused damaged to the doorbell, front door lock, blinds, bedroom door frame and bathroom cabinets.

I accept the witness's undisputed testimony regarding the frequency of police visits and altercations occurring at the subject rental property. Given the intentional damage caused to the subject rental property and the numerous people allowed to come and go from the subject rental property, I find, on a balance of probabilities, that it would be unfair for the landlord to wait for a notice to end tenancy to take effect as significantly more damage to the subject rental property could occur in that time. Pursuant to section 56(2)(a)(v) and section 56(2)(a)(iii) of the *Act*, I grant the landlord a two-day Order of Possession.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenants' security deposit.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. 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.

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 15, 2022

Residential Tenancy Branch