



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 an Application for Dispute Resolution (the Application) that was filed by the Landlords under the Residential Tenancy Act (the Act), seeking:

- An early end to the tenancy pursuant to section 56 of the Act; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call at 9:30 AM (Pacific Time) on September 12, 2022, and was attended by the Landlords Y.B. and R.M. and their adult child M.B., who acted as their agent/interpreter. All testimony provided was affirmed. Neither the Tenant nor an agent for the Tenant attended. The attendees were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, the Notice of Hearing, and the documentary evidence to be relied on by the Applicants at the hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlords and their agent testified that the documentary evidence before me relating to extraordinary damage to the rental unit and a dog attack, as well as the Notice of Dispute Resolution Proceeding Package for the Expedited Hearing (including a copy of the Application and the Notice of Hearing), were posted to the door of the Tenant's rental unit on August 23, 2022. Branch records indicate that the Notice of Dispute Resolution Proceeding Package for the Expedited Hearing was emailed to the Landlords on August 19, 2022, by the Residential Tenancy Branch (the Branch). M.B.

stated that as they did not realize that multiple e-mail addresses had been used during the application process, they were only monitoring one e-mail address, and therefore did not initially see the e-mail sent by the residential tenancy Branch. M.B. stated that once they realized that the e-mail had gone to a secondary e-mail address used in the Application, and not the one they had been monitoring, they immediately served the NODRP and evidence on the Tenant as set out above.

While I acknowledge that the NODRP and the documentary evidence before me relating to damage to the rental unit and an animal attack was not served in accordance with section 59 of the Act or Rule 10.3 of the Rules of Procedure, I am nonetheless satisfied that the tenant was deemed served with these documents on August 26, 2022, which is more than two weeks prior the date of this hearing. As a result, and in the absence of any evidence to the contrary, I find that the Tenant still had sufficient time to review, consider, and respond to this documentary evidence should they have wished to do so, and I therefore find the NODRP and the aforementioned documentary evidence sufficiently served for the purposes of the Act on August 26, 2022, pursuant to section 71(2)(b) and (c) of the Act.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. As I am satisfied that the Tenant was properly notified of the hearing and the Application as set out above, and the Landlord and their agent attended the hearing on time and ready to proceed, the hearing therefore proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

The attendees were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The attendees were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The attendees were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlords, a copy of the decision and any orders issued in their favor will be emailed to them at the e-mail address requested at the hearing for this purpose.

Preliminary Matters

At the hearing the agent M.B. stated that the additional documentary evidence before me which was submitted to the Branch on September 4, 2022, was personally served on the Tenant via USB yesterday at 8:00 A.M. M.B. argued that the Tenant had sufficient time to review and respond to this documentary evidence and it should be considered at the hearing. For the following reasons, I disagree. Firstly, this is an expedited hearing and rule 10.2 of the Rules of Procedure stipulates that an applicant must submit all evidence that they intend to rely on at the hearing with the Application. As the Application was filed on August 3, 2022, I find that the Landlords did not comply with rule 10.2 of the Rules of Procedure. Secondly, I am not satisfied that just over 24 hours represents a sufficient amount of time for a respondent to not only review and consider, but also have an opportunity to respond to, evidence against them, especially evidence that could result in the termination of their tenancy. Lastly, I find that the additional documentary evidence submitted relates to new incidents which have allegedly occurred since the Application was filed, and therefore these incidents were not noted or referred to in the Application. As a result, I find that the Tenant would not have reasonably been able to anticipate that these incidents would be referred to by the Landlords at the hearing and that it would therefore be unreasonable to consider this documentary evidence in assessing whether or not the Landlords have grounds under section 56 of the Act to end the tenancy.

Based on the above, I have therefore excluded the documentary evidence submitted to the Branch on September 4, 2022, from consideration in this matter.

Issue(s) to be Decided

Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the Act?

Is the Landlord entitled to the recovery of the filing fee pursuant to section 72 of the Act

Background and Evidence

The written tenancy agreement in the documentary evidence before me states that the one-year fixed term tenancy commenced on July 2, 2022, and may continue on a month-to-month basis at the end of the fixed term. It states that rent in the amount of \$1,400.00 is due on the second day of each month and that a \$700.00 security deposit is required. At the hearing the Landlords and their agent confirmed that they still hold the Tenant's \$700.00 security deposit in trust, and requested permission to withhold \$100.00 from the security deposit for recovery of the filing fee.

The Landlords and their agent stated that the Tenant has caused extraordinary damage to the rental unit, seriously jeopardized the health and safety of the Landlords and M.B., who also occupies the property, by having an aggressive dog on the property who attacked one of the Landlords on July 17, 2022, causing injury, and that the Tenant has seriously jeopardized the lawful right or interest of the Landlords by forcibly entering and occupying a portion of the home belonging to the Landlords and not rented to the Tenant under the tenancy agreement. The Landlords provided photographs of damage to the property and photographs showing injuries and ripped clothing allegedly caused by the dog attack.

The Landlords and their agent argued that it would be unreasonable, or unfair to the Landlords and M.B. to wait for a notice to end tenancy under section 47 of the Act to take effect because the property damage is ongoing, they are fearful of future attacks by the Tenant's dog, and the ongoing fear and stress is harmful to the health of the Landlords who are both elderly and have health conditions. Further to this, they stated that the Tenant is now engaging in illegal activity on the property and was witnessed parking a stolen vehicle on the property on August 24, 2022, resulting in police attendance. As a result, the Landlords sought in order of possession for the rental unit as soon as possible.

Although the teleconference remained open for the 55-minute duration of the hearing, no one attended the hearing on the Tenant's behalf to provide any evidence or testimony for my consideration.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me from the Landlords and their agent, I am satisfied that the Tenant has seriously

jeopardized the health or safety of the Landlords and M.B, who also occupies the property, caused extraordinary damage to the residential property, and seriously jeopardized the lawful right or interest of the Landlords. I am also satisfied that it would be unreasonable or unfair to the Landlords and M.B. to wait for a notice to end tenancy under section 47 to take effect, given the seriousness health risk posed by another animal attack, the potential for ongoing damage to the rental unit, and the allegations of the Landlords regarding the recent illegal activity of the Tenant on the property which was supported by documentary evidence.

As a result of the above I find that the Landlords have cause under section 56 of the Act to end the tenancy and I therefore granted the Landlords an order of possession for the rental unit effective two days after service on the Tenant. As the Landlords were successful in their Application, I also grant them authority under section 72 of the Act to withhold \$100.00 from the Tenant's security deposit for recovery of the filing fee.

Conclusion

Pursuant to section 56 of the Act, I grant an Order of Possession to the Landlords effective two days after service of this Order on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from them by the Landlord.

Pursuant to section 72 of the Act, the Landlords are also entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee. The balance of the security deposit must be dealt with in accordance with the Act.

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 12, 2022

Residential Tenancy Branch