



Dispute Resolution Services

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 end to the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:05 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. 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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord and I were the only ones who had called into the hearing.

The landlord testified he served that the tenant with the notice of dispute resolution package and supporting documentary evidence by posting them on the door of the rental unit on September 1, 2022. He submitted a Proof of Service of Notice of Expedited Hearing form signed by a witness confirming this. I find that the tenant is deemed served with these documents on September 4, 2022, three days after the landlord posted them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession on an expedited basis; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting March 1, 2022 and ending February 28, 2023. Monthly rent is \$1,900 plus hydro and is payable on the first of each month. The tenant paid the landlord a security deposit of \$950, which the landlord continues to hold in trust for the tenant.

The rental unit is an apartment located in a multistory stratified apartment building. The building is administered by a property management company.

The landlord testified that the property management company emailed him on June 14, 2022 and stated that they had received reports that the rental unit was being used for the provision of escort services. Additionally, they stated that they received reports that the customers of these services were threatened by a "bodyguard who's armed with a weapon".

The landlord testified that he asked for documents to corroborate these allegations, so he could make an application to end the tenancy.

Shortly thereafter, a new property management company took over, and the landlord's request for corroborating documents did not get passed on to the new company.

Despite this, the landlord testified that he met with the tenant on July 14, 2022 to discuss the allegations. He testified that the tenant did not deny the allegations and that the parties mutually agreed to end the tenancy on August 1, 2022. He sent an email to the tenant that evening confirming this agreement. The tenant did not respond to this email.

The landlord testified that the tenant did not vacate the rental on August 1, 2022 nor did she pay any rent for that month or for September.

On August 2, 2022, the new property management company emailed the landlord's wife as follows:

From the Strata President:

- There were reports of Bike room thefts occurring at various times between June 28 and July 22. There could be more, pending the final results of the investigation.
- Various residents opened police files on the matter, one such file is 22-105650
- The VPD investigator reached out to strata. When we reviewed video, we saw the resident and the thieves together in the building. The first few thefts were just the associates (thieves) using the resident's regular fob to access the bike rooms.
- Upon further investigation, we saw another incident that involved the thief stealing the bike, and it the 412 resident appears to aid his entry and exit of the building with bike in tow.

We've referred all of this information to VPD, and they are actively working on this case.

We also received a anonymous report in June that the resident in this unit allegedly posed as an escort, using this as a cover to steal money from clients. It was said in the anonymous report that when clients attempted to get their money back, male associates of the resident would threaten them with violence. We could not verify the validity of the claims.

On August 2, 2022, the landlord issued a notice of entry to the tenant. On August 4, 2022, the landlord attended the rental unit and entered it. The tenant was not home. He testified that the rental unit was quite dirty and that the tenant had installed a "stripper pole" in the living room. He sent the tenant an email recounting these discoveries and demanding a response by the next day. The tenant did not respond.

On August 31, 2022, the property management company sent the landlord two letters, each relating to the tenant's violations of the Strata Corporation Bylaws, specifically that:

It was brought to Strata Council's attention that a person associated with the resident of the unit accessed the bike locker using their fob and was seen stealing a bike on June 28, 2022.

And:

It was brought to Strata Council's attention that a resident of your unit was reported aiding the thief in extracting a bike out of the parking lot on July 22, 2022.

The property management company attached photographs to each of these letters. The first set of photos from June 28, 2022 show the tenant and two men (one of who the landlord identified as the tenant's boyfriend, who was wearing a hooded sweatshirt with the word "North" on the back) entering an elevator together. In a second photo the man who is not the tenant's boyfriend is seen walking a bicycle.

The second letter attaches a photo of the tenant followed by her boyfriend (wearing the same sweatshirt) who is walking a different bike in an underground parking lot.

After receiving these letters, the landlord testified her joined a "WhatsApp" chat group for residents of the building and asked if any of the residents had their bicycles stolen out of the building's bicycle locker recent. He testified that one resident responded in the affirmative.

This resident provided the landlord with additional surveillance photos and a surveillance video showing the tenant's boyfriend (wearing the same hooded sweatshirt) entering the bicycle locker and removing a third bicycle. The video was dated July 22, 2022.

Analysis

Section 56 of the Act sets out the criteria that must be met for a landlord's early end to tenancy application:

Application for order ending tenancy early

56(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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord must prove it is more likely than not that the tenant's conduct meets the criteria set out at section 56(2) of the Act.

I found the landlord's testimony, supported by the video and photographic evidence, and the letter from the property management company stating that the tenant's fob was used when a bicycle was stolen on June 28, 2022, to be credible.

The fact that the man on the surveillance video seen removing a bicycle from the storage locker wears the same sweatshirt and has similar facial hair as the man the landlord identified as the tenant's boyfriend in a photo where both are seen entering an elevator with a third individual has a bike (and as the property management company states in their letter that that the tenants fob was used to access the storage room) causes me to find that it is more likely than not that the tenant or one or more individuals she permitted into the residential property stolen personal property of another occupant of the building.

This amounts to an unreasonable disturbance to those occupants, as well as an illegal act which both adversely affected the quiet enjoyment and the security of the other occupants, and which jeopardized these occupants' lawful rights. As such, I find that the landlord has satisfied the requirements set out at section 56(2)(a) of the Act.

In light of the fact that the tenant or someone she has allowed on the residential property has stolen bicycles on multiple occasions, I find that it would be unfair to the landlord and the other occupants of the residential property to require her to wait to issue a notice to end tenancy pursuant to section 47 of the Act. As such, the landlord has satisfied the requirement set out at section 56(2)(b) of the Act.

Accordingly, I issue the attached order of possession, effective two days after the landlord serves it on the tenant in accordance with the Act.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he is entitled to recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of the monetary orders made above.

The landlord must handle the balance of the security deposit in accordance with the Act.

I explicitly make no findings as to whether the tenant has engaged in operating an escort service or as to whether she is in rental arrears.

Conclusion

Pursuant to section 56 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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 20, 2022

Residential Tenancy Branch