



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on August 11, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk.

The Landlord, the Landlord's Agent, the Tenant, and the Tenant's Advocate attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Notice of hearing and documentary evidence. As such, I find that the Tenant was sufficiently served pursuant to Section 71 of the *Act*. The Tenant stated that they did not provide any documentary evidence in response to the Application.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?

Background and Evidence

The parties agreed that there is no written tenancy agreement between them. The Landlord stated that they purchased the rental property in April 2021 and that the tenancy had already been established. The Tenant stated that he moved into the rental unit approximately six years ago. The parties disagreed on the amount of rent owed to the Landlord each month. The Landlord stated that they expected the Tenant to pay rent in the amount of \$3,000.00. The Tenant stated that he was only required to pay rent in the amount of \$750.00 per unit, and had occupied two units up until January 15,

2022. The Tenant stated that he downsized to only one unit since, therefore, only currently owes rent in the amount of \$750.00. The parties agreed that no security deposit was paid, and that the tenancy is still ongoing.

The Landlord stated they received a notice from the City dated May 5, 2022 indicating that the rental property was posted no occupancy after it was found that the property was used in contravention of the City's Controlled Substance Property Bylaw. The Landlord stated that they are required to arrange for the property to be cleaned by an industrial professional hygienist so that the rental property can be disinfected on or before June 5, 2022. The Letter continues to say that occupancy is not permitted until the Landlord has passed the final inspection by the City.

The Landlord stated that the Tenant has not paid any rent in 13 months, and continues to occupy the rental unit despite notices being sent to the Tenant by the Landlord. The Landlord stated that due to conflict between the Tenant and the Landlord, they have been unable to complete the required tasks as outlined by the City. The Landlord stated that the Tenant has tampered with the water supply since the utilities have been shut off. The Landlord stated that they are incurring fines from the City until such a time that they come into compliance.

The Tenant indicated that they had not received any notices from the Landlord until they received the Application, indicating there was an issue with the rental property. The Tenant stated that the Landlord was responsible for bringing hazardous material onto the property, which has several structures on it. The Tenant questioned if it would be possible to accommodate having the Tenant occupy a separate structure until such a time that he finds an alternate accommodation. The Tenant questioned why the Landlord did not notify the Tenant once they became aware of the May 5, 2022 Notice from the City. The Tenant stated that he would be unable to vacate the property on such short notice.

Analysis

Based on the documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

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...

(a) The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(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, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) 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

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32

(3) [*obligations to repair and maintain*], within a reasonable time;

(h) the tenant

(i) has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

(2)A notice under this section must end the tenancy effective on a date that is

(a)not earlier than one month after the date the notice is received, and

(b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. I accept that the Landlord received the May 5, 2022 Notice from the City, indicating that the rental property was posted no occupancy after it was found that the property was used in contravention of the City's Controlled Substance Property Bylaw. I accept that the Landlord is required to arrange for the property to be cleaned by an industrial professional hygienist so that the rental property can be disinfected. Based on the Notice provided by the Landlord, this was meant to take place on or before June 5, 2022.

I find that it would have been the Landlord's responsibility to serve the Tenant with a proper Notice to End Tenancy under Section 47(1)(k). I find that the Landlord provided insufficient evidence to demonstrate that they notified the Tenant of the issue or took sufficient action soon after receiving the Notice from the City to comply with their recommendations. The fact that the Landlord waited until August 11, 2022 to end the tenancy takes away from the immediate and severe requirement of the application.

Furthermore, I find that the Landlord has provided insufficient evidence to demonstrate that it was the Tenant who contributed to the property being used in contravention of the City's Controlled Substance Property Bylaw.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act. In light of the above, I dismiss the Landlord's Application, without leave to reapply.

Conclusion

The Landlord had insufficient evidence to prove that the tenancy should end early under section 56. The tenancy will continue until ended 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