



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

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 this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent, KS ("landlord"), attended the hearing with their agent, and both were given a full opportunity to be heard, to present sworn 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 Hearing. During the hearing, I also confirmed that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording the dispute resolution hearing by participants, and that the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. The landlord confirmed that they understood.

The landlord provided proof of service and tracking information in their evidentiary materials to show that the tenant was sent the dispute resolution package by way of registered mail on September 23, 2022. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with this package on September 28, 2022, 5 days after mailing. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on August 1, 2019. The tenant resides in a subsidized housing complex, where the tenant pays \$461.00 towards the monthly rent. The landlord collected a security deposit in the amount of \$471.50, which the landlord still holds.

The landlord filed this application on September 16, 2022 after receiving notification on September 14, 2022 from a concerned resident that the tenant has been convicted and sentenced for a serious criminal offence against a young victim, who also resides in the same complex. The landlord attached a copy of the court decision, as well as the title of a news article dated September 14, 2022 which states “woman sentenced to 5.5 years for sexually assaulting 15-year-old boy”...”Consecutive sentences for two counts of sexual assault, one count of internet luring”.

Due to the nature and gravity of the offences, and the fact that both the tenant and victim reside in the same complex, the landlord and other tenants are extremely concerned about the continuation of this tenancy, and risk to other young children who reside in this complex.

The landlord’s agent testified in the hearing that they have not received any updates from the tenant, including any notices that the tenant has vacated the rental unit. The landlord is requesting an Order of Possession effective immediately.

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 a 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.

Based on the evidence and sworn testimony before me, I find that sufficient evidence has been provided to warrant an end to this tenancy for at least one of the reasons outlined in section 56, as outlined above. I find that the tenant has engaged in illegal activity that has adversely affected the safety and physical well-being of another occupant on the property.

The landlord is seeking an Order of Possession as the landlord is concerned about the nature of the offences that involve serious sexual offences under the Criminal Code of Canada against a minor under the age of 16, who also resides in the same complex.

The second test to be met in order for a landlord to obtain an early end to tenancy pursuant to section 56 of the *Act* requires that a landlord demonstrate that "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" for cause to take effect. On this point, I find that the reasons cited by the landlord for circumventing the standard process for ending a tenancy for cause meet the test required to end this tenancy early as this matter pertains the immediate safety and well being of the victims involved in these incidents, as well as the potential harm to other children in the complex.

The serious nature of offences referenced in the hearing and landlord's application is quite worrisome. I note that the tenant has chosen to not appear at this hearing, nor have they provided any contrasting accounts by way of written evidence.

The main reason for the urgent nature of this application is the immediate risk to the safety and well-being of others, especially vulnerable children in the same complex, and I find that the landlord has provided sufficient evidence to support this. The landlord has provided evidence to support that serious harm has been caused to at least one young tenant in the complex, which highlights the potential volatility that others may face if this tenancy continues, as well as the risk to their safety and well-being.

Under these circumstances, I find that it would be unreasonable and unfair to the landlord for a 1 Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the landlord has provided sufficient evidence to warrant ending this tenancy early. I issue a two day Order of Possession to the landlord.

I allow the landlord's application to recover the \$100.00 filing fee from the tenant. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the security deposit in satisfaction of this monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the \$100.00 filing fee by allowing the landlord to retain \$100.00 from the security deposit for this tenancy.

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: October 13, 2022

Residential Tenancy Branch