



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an order for early end to tenancy and an Order of Possession of the rental unit pursuant to section 56; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agent MC attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:43 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that MC and I were the only ones who had called into the hearing.

I informed MC that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Materials

MC confirmed that the notice of dispute resolution proceeding package and the Landlord's evidence (collectively, the "NDRP Package") were sent to the Tenant via registered mail on September 24, 2022. The Landlord submitted a signed Proof of Service and a registered mail receipt with tracking number (referenced on the cover

page of this decision) in support. Tracking records show that the package was delivered on September 27, 2022. Based on the foregoing, I find the Tenant was sufficiently served with the NDRP Package pursuant to section 71(2) of the Act, Rule 10.3 of the Rules of Procedure, and section 3(b) of the director's standing order dated March 1, 2021.

Having found the Tenant to be duly served with notice of this hearing, I directed that this hearing continue in the absence of the Tenant.

Issues to be Decided

1. Is the Landlord entitled to end the tenancy early and an Order of Possession?
2. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

This tenancy commenced on January 19, 2022 and is month-to-month. The Tenant pays rent of \$320.00 per month and receives a subsidy for the balance of the economic rent. The Tenant paid a security deposit of \$583.00 which is held by the Landlord.

MC testified that the circumstances are unfortunate in that the Tenant is a pensioner who appears to be unable to live independently and has been refusing help to connect him with services.

MC testified that the Tenant has created floods in the building on multiple occasions since moving in this year, including documented incidents on January 24, March 10, March 31, July 20, and September 9, 2022. MC testified there were at least two other incidents where neighbours had mopped up the floor on a Sunday morning and reported it to the Landlord the next day on Monday, when there was nothing further for the Landlord to do. The Landlord submitted handwritten logs, incident reports, and letters to the Tenant into evidence.

MC testified the Tenant is in the habit of leaving food all over his kitchen sink, turning the water on, then going into the living room to watch TV. MC testified that the Tenant knows the water is running and sees the water coming out but does not take any action. MC testified that on one occasion, the Tenant unscrewed pipes in the kitchen and caused a flood. MC testified that the Tenant also causes flooding from his bathroom by clogging and flooding his bathroom sink and not using his shower curtain, which the

Landlord had installed for him. MC indicated that the bathroom sink is only 1.5 years old but will likely have to be replaced due to the damage.

MC testified that the Landlord's contractors have attended the building multiple times after hours due to the flooding incidents. MC testified that the flooding caused by the Tenant has resulted in brown water stains in the units on the floor below the rental unit, as well as in two units that are two floors down, which will require painting and restoration. MC testified that lengths of baseboards will also have to be replaced.

MC confirmed that the Tenant's behaviour has not improved despite attempts to help him. MC testified that since this application was made, there was another flood caused by the Tenant that occurred approximately 2 weeks ago.

MC testified that the rental unit is also extremely dirty, with a smell of urine and leftover food everywhere.

Analysis

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.

1. Is the Landlord entitled to end the tenancy early and an Order of Possession?

In this case, the Landlord bears the onus of proving that this tenancy should be ended early and an Order of Possession be granted.

Section 56 of the Act states as follows:

Application for order ending tenancy early

56(1) A landlord may make an application for dispute resolution requesting

(a) an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47

[*landlord's notice: cause*], and

(b) an order granting the landlord possession of the rental unit.

(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.
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Based on MC's undisputed testimony and the evidence submitted by the Landlord, I am satisfied on a balance of probabilities that an early end to the tenancy is warranted in the circumstances. I accept the Landlord's evidence that the Tenant has caused multiple floods in the rental unit which have spilled out into common areas and affected other units in the building. I accept the Tenant has tampered with the plumbing in his kitchen and has not been using his kitchen and bathroom facilities properly. I find the latest documented incident of flooding occurred on September 9, 2022, as shown in the Landlord's incident report of the same date. Based on the foregoing, I find the Tenant has put the Landlord's property at "significant risk" within the meaning of section 56(2)(a)(iii) of the Act. I also find that the Tenant has unreasonably disturbed other residents in the building under section 56(2)(a)(i) of the Act by flooding the common hallways. I note the Landlord has not submitted any photographs or repair estimates for the damage caused, and as such, I am unable to conclude whether the damage caused amounts to "extraordinary damage" under section 56(2)(a)(v) of the Act.

Based on the above, I find the Landlord has met the onus of proving cause for ending the tenancy early under sections 56(2)(a)(i) and 56(2)(a)(iii) of the Act.

Moreover, I find the Landlord has established that it would be unreasonable and unfair to require a one month notice to end tenancy for cause be issued in the circumstances. I accept MC's testimony that since this application was made on September 12, 2022, the Tenant has caused another flood in the rental unit. I am satisfied that there is an urgency to the situation and there is ongoing and significant risk to the Landlord's property as well as risk for unreasonable disturbance of the other occupants in the building. Therefore, I conclude that it would be unreasonable and unfair for the Landlord and other occupants to wait for a one month notice to be issued.

Having found the requirements in sections 56(2)(a)(i), 56(2)(a)(iii), and 56(2)(b) of the Act to be met in the circumstances, I conclude that this tenancy should be ended early.

2. Is the Landlord entitled to recovery of the filing fee?

As the Landlord has been successful in this application, I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to deduct \$100.00 from the Tenant's security deposit in full satisfaction of the amount awarded in this application.

Conclusion

The Landlord has met the burden of proving that the tenancy should end early.

Pursuant to section 56(2) of the Act, I order that the tenancy is ended October 21, 2022, the date of this decision.

Pursuant to section 56(2), I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant. 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 Landlord is authorized to deduct \$100.00 from the Tenant's security deposit on account of the filing fee awarded in this application. The balance of the Tenant's security deposit shall be dealt with in accordance with the Act, the Residential Tenancy Regulation, and the parties' tenancy agreement.

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 21, 2022

Residential Tenancy Branch