



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This is an application by the landlord to end the tenancy early by way of an expedited hearing and seeking;

- an order of possession for the subject rental property
- recovery of the filing fee

The landlord attended the hearing represented by AB. The tenant did not attend.

The landlord confirmed he was not recording the hearing pursuant to Rule of Procedure 6.11. The landlord was affirmed.

The landlord served the Notice of Expedited Hearing on the tenant by personally handing her a copy on September 28, 2022, and provided a proof of service form to that effect. Pursuant to section 89 the Act the tenant is found to have been served.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for the rental property?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy commenced January 1, 2021, on a month to month basis. Rent is \$1250.00 per month and the landlord holds a security deposit of \$625.00 a month in trust. The tenant still occupies the rental property.

The landlord stated that a fire occurred at the rental property on September 9, 2022. It started outside on the sundeck and was caused by a cigarette. When the fire department attended, the fire and smoke were significant enough that they had to break windows and the water used to put out the fire caused significant damage to the interior of the residence. There is no power to the residence currently. The city will be coming to shut off the water supply in the near future. The landlord stated that he does not know the full extent of the damage to the rental property as the insurance company will not come in to assess until the tenants vacate the property. The landlord provided many photos depicting both the interior and exterior of the rental property after the fire. They showed significant damage to both the outside and inside of the rental property from fire, smoke and water.

Analysis

Section 56.1 of the Act states:

- 56.1** (1)A landlord may make an application for dispute resolution requesting
- (a)an order ending a tenancy because
 - (i)the rental unit is uninhabitable, or
 - (ii)the tenancy agreement is otherwise frustrated, and
 - (b)an order granting the landlord possession of the rental unit.
- (2)If the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order
- (a)deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and
 - (b)specifying the effective date of the order of possession.

After hearing from the landlord about the extent of the damage to the rental property and viewing the photographs, I find that the residence is uninhabitable. There is currently no power, the water is going to be shut off, and extensive repairs must occur to make the property habitable again.

I therefore find that the tenancy agreement ended on September 9, 2022 after the fire made the residence uninhabitable. The landlord is entitled to an order of possession for the rental property.

As the landlord was successful in his application, he is also entitled to recover the filing fee for his application. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain \$100.00 from the tenant's security deposit in full satisfaction for a return of the filing fee.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord can retain \$100.00 from the tenant's security deposit in satisfaction of recovery of the filing fee.

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 11, 2022

Residential Tenancy Branch