



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on September 21, 2022 seeking an order to end the tenancy on the basis that the Tenant poses an immediate and severe risk to the property, other occupants, or the Landlord. They also applied for recovery of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 14, 2022.

The Landlord attended the hearing; the Tenant did not. I provided the Landlord the opportunity to present oral testimony and make submissions during the hearing. The Landlord affirmed an oath after I informed them that their statements are evidence in this legal process.

Preliminary Matter – notification of the hearing

The Landlord presented that they delivered notice of this dispute resolution to the Tenant by attaching a copy of the document to the door of the rental unit on September 21, 2022. In their prepared evidence, the Landlord provided an image of the notice attached to the door with tape, and a “Proof of Service” document. They had no communication with the Tenant since this date of service.

From what the Landlord presents here on notifying the Tenant of this hearing, I am satisfied they served the Tenant notice of this hearing in a method prescribed by the *Act*, particularly s. 89(2)(d). This included all the evidence the Landlord prepared for this hearing.

Given my finding that the Landlord effected service in the proper manner and in compliance with the *Act*, I proceed with the hearing. I conducted the hearing, in the absence of the Tenant, as allowed by Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure*.

Late Evidence from the Landlord

In line with the *Residential Tenancy Branch Rules of Procedure*, particularly Rule 10.3 and Rule 10.4, I give no consideration to evidence the Landlord provided 2 days and 1 day, separately, prior to the hearing. They noted they did not provide a copy of this evidence to the Tenant. This is in line with procedural fairness.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession that ends the tenancy for cause and without notice by s. 56 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee?

Background and Evidence

The Landlord confirmed basic details in the tenancy agreement that they presented in their evidence.

The Landlord applies for an end of tenancy based on the “immediate and severe risk to the rental property, other occupants or the landlord.” They described separate incidents in the hearing:

- recorded theft of a bicycle by the Tenant’s guest – the owner of said bicycle notified the police, and the Landlord was aware of the Tenant’s involvement through tracking of the key fob activity
- the door at the rental unit was kicked in by a guest of the Tenant – the police were called again for this separate incident

- The Landlord became aware of other people living in the rental unit – details on this were provided by other building residents, and the Landlord observed first-hand other individuals coming to the rental unit location in the building and entering
- Other incidents involved unidentified people trying to gain access to the rental unit by throwing rocks at neighbours' windows asking to be let in. This caused great concern among other building residents.
- An adjacent construction area contains a portable toilet that outsiders are using to gain entry into the rental unit.

The Landlord described all of these incidents in detail in the hearing. Overall, they summed up by saying the security of the building was compromised. They are aware of other individuals living in the rental unit, and fear damage to the contents of the rental unit, requiring an immediate end to this tenancy.

Analysis

The *Act* s.56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end tenancy were given under s. 47 [*landlords' notice: cause*], and
 - (b) granting the landlords an order of possession in respect of the rental unit.

The *Act* s.56(2) sets out two criteria. First, the landlords must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlords to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- (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 landlords of the residential property;

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlords or another occupant;
- (iii) put the landlords' property at significant risk;

I have carefully considered the evidence of the Landlord concerning the conduct of the Tenant's guests and other individuals who apparently reside in the unit after the Tenant moved out.

I find the Landlord here presented sufficient evidence to show the Tenant and/or a person permitted on the residential property by the Tenant was the cause of interference and disturbance of others in the building, as well as one criminal action involving theft, and one involving a break-in to the rental unit.

I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the Landlord to wait for a set-period Notice to End Tenancy to take effect. The Tenant allowed individuals into the rental who caused significant damage, and they continue to occupy the rental unit without paying rent. I find this all warrants an expedited end to the tenancy in that persons allowed in by the Tenant continue to maintain occupancy. The occupants have no rights under the *Act* and must vacate immediately.

I so grant an Order of Possession in line with this rationale. By this Order of Possession, the occupants and/or the Tenant must vacate immediately when the Landlord serves it to them.

I recommend that the Landlord have the police present when serving the Order of Possession if they plan on personal service. A copy of this decision will be helpful to the police in that regard.

Conclusion

For the reasons above, I grant an Order of Possession to the Landlord effective immediately at the time the Landlord's serves the Order of Possession upon the Tenant and/or other occupants. Should the Tenant and/or other occupants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Because the Landlord was successful in this Application, I grant them reimbursement of the Application filing fee with a monetary order for that amount. I provide the Landlord with this Monetary Order in the above terms, and they must serve it to the Tenant as

soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 14, 2022

Residential Tenancy Branch