



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 56 for an early termination to the tenancy;
- return of his filing fee pursuant to s. 72.

H.G. attended as the Landlord and was joined by S.M. as his agent. The Tenant did not attend the hearing, nor did someone attend on their behalf.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the Notice of Dispute Resolution and Landlord’s evidence was served on the Tenant via registered mail sent on October 3, 2022. The Landlord has provided a tracking receipt as proof of service. I find that the Tenant was served by way of registered mail sent on October 3, 2022 in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord’s application materials on October 8, 2022.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded without participation from the Tenant.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession without issuing a notice to end tenancy?
- 2) Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on August 1, 2015.
- Rent of \$950.00 is due on the first day of each month.
- A security deposit of \$300.00 is held by the Landlord in trust for the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord. I am advised by the Landlord that the rental unit in question is a lower suite within a detached home in which the upper unit is tenanted by other individuals.

I am advised that the Tenant has caused several fires within his rental unit over a number of years, the most recent of which occurred on June 18, 2022. On that occasion, the Landlord advised that he was notified by the upper tenants that there was smoke coming from the rental unit, which prompted the Landlord to attend the property. The fire department was notified and also attended the rental unit. The Landlord testified that the Tenant refused to give access to the rental unit to the fire fighters such that the police also had to attend to permit them access. The Landlord testified that he was informed by the fire department that the cause of the smoke was a fire within the rental unit.

The Landlord's evidence includes photographs of fire damage within the kitchen, which shows a fire occurred on the oven range and scorched the walls and cabinets. The Landlord testified that these photographs were taken in August 2021. The Landlord's agent indicated that the Landlord did not act at that time as there was an understanding that the Tenant would be more cautious in the future and keep the fire alarm within the rental unit in working order. I am advised by the Landlord that the Tenant had removed

fire alarms from the rental unit and that he may have done so once more prior to June 2022.

I was directed to a letter dated August 4, 2022, which I am advised by the Landlord's agent came from the tenant in the upper unit. The letter describes five incidents in which smoke from the Tenant's lower rental unit entered the upper suite, the most recent of which occurring on June 18, 2022. The upper tenant indicates that they have told the Landlord that they fear the Tenant will burn the whole house down and that he fears for the safety and lives of his family. The Landlord testified that the upper tenants have indicated they feel unsafe in their rental unit.

The Landlord and Landlord's agent confirmed the Tenant continues to reside within the rental unit.

Analysis

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between ss. 47 and 56 is that under s. 56(2)(b) a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline #51 sets out that applications to end a tenancy early under s. 56 are for very serious breaches only and require sufficient supporting evidence. Policy Guideline

51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

Based on the undisputed evidence before me I accept that the Tenant has a history of causing fires within the rental unit. This history is important because these are not isolated incidents in which it could be said that an accident occurred. I am advised and accept that the Tenant and Landlord came to an understanding on or about August 2021 that the Tenant would act more diligently in future and keep the fire alarm in place.

Despite this, a further incident occurred on June 18, 2022. On that occasion, fire services attended the rental unit to ascertain whether there was a risk to people or property, which is their duty. I am advised and accept that the Tenant refused them access to the rental unit and that police had to attend as a result. What is troubling is that there does not appear to have been a smoke detector on that occasion, since if there was one it would be unlikely that the Tenant could have fallen asleep or neglected to take notice of the fire. The upper tenants letter indicates that the fire was to the extent that smoke entered their rental unit.

Based on the undisputed evidence before, I find that the Tenant has put the Landlord's property at significant risk and that he unreasonably disturbed the other occupants of the residential property. Again, this has not been an isolated incident such that the most recent incident of June 18, 2022 clearly indicates that the Tenant has not heeded the understanding from August 2022 to correct his actions. Given the recurring nature and the significant risk posed to the other occupants from a fire should it get out of control, I find that it would be unreasonable and unfair to wait for a notice to end tenancy issued under s. 47 to take effect.

The Landlord has demonstrated he is entitled to order of possession pursuant to s. 56 of the *Act* and shall receive that order.

Conclusion

The Landlord is entitled to an order of possession under s. 56 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord has been successful in his application. I find that he is entitled to the return of his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the

Landlord's \$100.00 filing fee. I exercise my discretion pursuant to s. 72(2) of the *Act* and direct that the Landlord withhold \$100.00 from the security deposit in full satisfaction of the filing fee.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 25, 2022

Residential Tenancy Branch