



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the Landlords' 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 Landlords attended the hearing and were 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 10:00 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 the Landlords and I were the only ones who had called into the hearing.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Naming of Landlords

The Landlords' evidence is that one of the Landlords named on this application, GM, is the owner of the home in which the rental unit located. The other named Landlord, RW, is a social worker who has been helping GM with this case.

Section 1 of the Act defines a “landlord”, in relation to a rental unit, to include any of the following:

- (a) the owner of the rental unit, the owner’s agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement; [...]

I find that RB meets the definition of a “landlord” by acting as GM’s agent and a person who exercises powers and performs duties under the Act on GM’s behalf. As such, I leave the style of cause for this application unamended.

Preliminary Matter – Service of Dispute Resolution Documents

RB confirmed that the notice of dispute resolution proceeding package and the Landlords’ evidence (collectively, the “NDRP Package”) were posted to the Tenant’s door on November 3, 2022. The Landlords submitted a signed and witnessed Proof of Service form and photographs in support. 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 2(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 this hearing to proceed in the Tenant’s absence.

Issues to be Decided

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

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is a one-bedroom suite in the basement of GM's home. GM is 90 years old and resides on the main floor.

The Landlords' evidence is that on September 8, 2022, GM looked outside and saw a group of people in front of his home. GM went outside to investigate and was approached by the Tenant who asked if GM had a room to rent. GM said he had a room and that it was \$800.00 per month to rent. The Tenant stated she only had \$150.00, but she could pay some and then pay the rest soon. The Landlords testified that the Tenant moved into the rental unit on September 8, 2022 and paid GM \$60.00.

The Landlords submitted that on September 24, 2022, the Tenant paid another \$200.00 to GM, but later asked GM to return the money so she could move out. GM confirmed he returned \$200.00 to the Tenant but the Tenant did not leave the rental unit. The Landlords testified that the Tenant has since refused to pay any rent.

RB testified, and GM confirmed, that on October 9, 2022 GM was assaulted on the rental property by an acquaintance of the Tenant. The Landlords' evidence is that there had been an argument between the man and GM, and the man hit GM causing GM to fall onto the grass. The Landlords testified that the police came twice and took GM to the hospital on the second visit. The Landlords submitted the police file numbers into evidence.

RB testified that on October 14, 2022, she and GM attempted to serve the Tenant with a 10 day notice to end tenancy for non-payment of rent. RB testified that when she went to the rental unit with GM, the Tenant yelled and screamed at them that the suite was "not worth \$800.00" and that she cannot pay. RB testified that it was later determined their 10 day notice did not have the Tenant's correct legal name. RB testified the Landlords opened another file with the police in order to learn the Tenant's correct name, which is listed on this application.

RB testified she was told by the police that the Tenant is well-known to them. RB testified that GM's niece found public access records from the court which shows the Tenant had been charged with offenses relating to assault, mischief, and possession of a weapon. RB testified she reviewed public records which show that these offenses had occurred in July 2022 and the Tenant was convicted this month. The Landlords submitted a provincial court hearing list dated November 3, 2022 into evidence.

GM testified that there was a subsequent incident with the Tenant in the laundry room, which took place sometime after October 24, 2022, and around a couple of weeks before this hearing. GM testified there was an argument about the Tenant's use of the dryer, which resulted in the Tenant pushing GM. GM indicated there is some bruising on his hand which was caused by the Tenant pushing him into the dryer.

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 Landlords bear 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 the Landlords' undisputed testimony and the evidence submitted, I am satisfied on a balance of probabilities that an early end to the tenancy is warranted in the circumstances. I accept GM's testimony that on October 9, 2022, he was hit by the Tenant's acquaintance on the rental property causing him to fall down. I also accept GM's testimony that the Tenant pushed him in the laundry room a couple of weeks prior to this hearing, and caused bruising on his hand.

Based on the foregoing, I find the Tenant and a person permitted on the residential property by the Tenant have "significantly interfered with" and "unreasonably disturbed" GM, who is a landlord and occupant of the residential property, within the meaning of section 56(2)(a)(i) of the Act. I further find the Tenant and a person permitted on the residential property by the Tenant have "seriously jeopardized" GM's health and safety under section 56(2)(a)(ii) of the Act.

Accordingly, I find the Landlords have met the onus of proving cause for ending the tenancy early under sections 56(2)(a)(i) and 56(2)(a)(ii) of the Act.

Moreover, I find the Landlords have 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 am satisfied that the Tenant and her guests pose an ongoing and significant risk to the GM's health, safety, and well-being. Therefore, I conclude that it would be unreasonable and unfair for GM to wait for a one month notice to be issued.

Having found the requirements in sections 56(2)(a)(i), 56(2)(a)(ii), 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 Landlords have been successful in this application, I grant the Landlords' claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Conclusion

The Landlords have met the burden of proving that this tenancy should end early.

Pursuant to section 56(2) of the Act, I order that the tenancy is ended November 18, 2022, the date of this decision.

Pursuant to section 56(2), I grant an Order of Possession to the Landlords 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.

Pursuant to section 72(1) of the Act, I grant the Landlords a Monetary Order in the amount of **\$100.00** for the filing fee. This Order may be served on the Tenant, 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 18, 2022

Residential Tenancy Branch