



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQANTTANAM HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

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

1. An early end to the tenancy and an Order of Possession pursuant to Section 56 of the Act; and,
2. Recovery the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agents attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agents and I were the only ones who had called into this teleconference. The Landlord's Agents were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Agents that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Agents testified that they were not recording this dispute resolution hearing.

The Landlord served the Notice of Dispute Resolution Proceeding package and evidence for this hearing to the Tenant by posting the notice on his door on December 8, 2022 (the "NoDRP package"). The Landlord provided a proof of service form #RTB-9 attesting to this service. I find that the Tenant was deemed served with the documents for this hearing three days after posting, on December 11, 2022, in accordance with Sections 89(2)(d) and 90(c) of the Act.

Issues to be Decided

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

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord's Agents confirmed that this tenancy began as a fixed term tenancy on March 1, 2022. The fixed term ended on May 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$570.00 payable on the first day of each month. A security deposit of \$470.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord's Agents testified that, through the use of cameras, they have observed the Tenant, and guests of the Tenant smoking illicit drugs in the hallway of the residential property. The Landlord's Agents state the residential property has a crime free housing policy. The Tenant and his guests are not permitted to engage in any drug related criminal activity (no using drugs on the property or dealing). The Landlord's Agents point out the No Smoking Clauses of the tenancy agreement which state:

Smoking

- Smoking is prohibited
 1. in the unit;
 2. in the building, including hallways, laundry rooms, and on the stairs;
 3. on patios or balconies;
 4. within 6 metres of a door, window, or air intake
- "Smoking shall include the inhaling, exhaling, burning or ordinary use of any tobacco, cannabis or product whose use generates smoke.

The Landlord's Agents uploaded pictures in their documentary evidence of the Tenant smoking using a crack pipe in his hallway in the residential property, and pictures of his guests also using illicit drugs in the same hallway outside the Tenant's door.

On November 12, 2022, the Tenant was observed kicking another tenant's door on the floor above his.

On November 27, 2022, the Tenant was escorted out of the building by the RCMP. The Landlord's Agents say this is almost a daily occurrence. Situations such as these started on Friday, Saturday, and Sunday nights, now they are occurring during daytime hours as well. On this night, there were a bunch of people in the Tenant's rental unit. The police let those people go and took the Tenant outside the building.

On November 29, 2022, another tenant who lives below the Tenant, knocked on the Tenant's door to ask him to keep the noise down. The Tenant came out with some sort of baton and chased the other tenant. The Landlord's Agents uploaded pictures of this event. The RCMP were called after this incident.

The Landlord's Agents stated that the Tenant is renting a 2-bedroom unit. He was given this unit because he is supposed to have his child living with him 40% of the time. Presently, the mom will not let the child stay with the Tenant, and the Tenant and his former partner are in court over their parenting arrangements.

The Landlord's Tenant Relations Officer states she does not want to go to the Tenant's unit alone. He has been violent, he has slammed the door in the workers faces, he has sworn at the workers, and he threatens them that he will, "*see them in court.*" Many of the people the Tenant has coming and going from his rental unit are known to the police.

The Landlord's Executive Director testified that they provide housing to families with young children, people with disabilities and elders. Their focus is on housing Indigenous and non-Indigenous Tenants. She stated that the Tenant is a "*nice guy when he's not using.*" She maintained that safety for other residents is the biggest element to consider in this claim, and the reason it would be unreasonable, or unfair to the Landlord and other occupants of the residential property, to wait for a notice to end the tenancy for cause.

The Landlord seeks an early end of tenancy and an Order of Possession.

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, in this application, is on the landlord to prove, on a balance of probabilities, the grounds on which this application for an early end to tenancy were based.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In this matter, Section 56 of the Act is relevant:

- 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.*

The Landlord's Agents' undisputed oral testimony describing several current occurrences by the Tenant was supported by documentary evidence uploaded in this matter. I also accept the Landlord's Agents' evidence that RCMP files were open due to calls made after significant disturbances, at least one of those involving an assault or a threat of an assault on another tenant.

The respondent Tenant's blatant use of illicit drugs in the hallways of the residential property is a breach of the tenancy agreement and, it seems, the circumstances that will continually impact his negative behaviour on others. I find the Tenant has significantly interfered with or unreasonably disturbed other occupants and the Landlord of the residential property. In the context of the safety of other residents, I also find that the Tenant's illegal activity, smoking illicit drugs in the residential property, has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord, and this activity makes it unreasonable, or unfair to the other occupants and the Landlord to have to wait for a notice to end the tenancy under Section 47 of the Act to take effect.

I find the Landlord has satisfied me that an order to end this tenancy early is warranted and is entitled to an Order of Possession, which will be effective two (2) days after service on the Tenant.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

Conclusion

The Landlord's application is successful. The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

The Landlord may deduct the \$100.00 application filing fee from the security deposit due to the Tenant.

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

Dated: December 15, 2022

Residential Tenancy Branch