



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to end the tenancy early and receive an order of possession pursuant to section 56 of the Act, plus the filing fee.

An agent for the landlord, MD (agent) attended the teleconference hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated November 3, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agent provided affirmed testimony that the Hearing Package was served on the tenant by registered mail on November 4, 2022. The registered mail tracking number and receipt were submitted in evidence and the tracking number has been included on the cover page of this decision for ease of reference. According to the Canada Post registered mail tracking website, the Hearing Package was marked as "unclaimed" and was returned to the landlord sender.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. Given the above and without any evidence to prove to the contrary, I find the tenant was duly served on the fifth day after mailing on November 9, 2022, in accordance with the Act.

Pursuant to section 7.3 of the Act, the hearing proceeded without the tenant. I consider this matter to be unopposed as a result.

Preliminary and Procedural Matter

The agent confirmed the email addresses for the landlord and the tenant during the hearing, which were listed on their application. As a result, the decision will be emailed to both parties.

Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession pursuant to section 56 of the Act?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

A month-to-month tenancy began on February 1, 2019. The agent confirmed that the tenant continues to occupy the rental unit.

The agent testified that the tenant caused a flood on October 26, 2022 and was advised that the tenant was found drunk and passed out on the floor of the rental unit with the tap left on, which flooded 3 units; 1. The rental unit, 2. The unit below the rental unit and 3. The ceiling of the unit located two floors below the rental unit. The agent also stated that the building caretaker found the tenant's door to have been barricaded which delayed entry into the rental unit.

The agent stated that he has received 4 complaints from other tenants in the building regarding this tenant, all of whom are scared of the tenant. Two of those four tenants were too frightened to write a letter for fear of reprisal from the tenant. The other two tenants who wrote letters for the hearing, only did so under the agreement with the agent to redact the names of those tenants before the letters were submitted, according to the agent. The agent was advised that I would not consider letters where the names were redacted as those become anonymous complaints, but that I would consider the undisputed testimony of the agent.

The agent testified that the building caretaker has since resigned due to the problems caused by the tenant. The agent confirmed that the flood caused by the tenant being drunk and passing out while the kitchen faucet was left on, resulted in \$1,000 in damage to the building. The agent also stated that the repairs have not been completed yet, so the total could increase. The agent confirmed that they had to shut off the water to a portion of the building while they determined where the flood was coming from,

which was the tenant's unit. This inconvenienced those whose water was shut off, including the two units before the rental unit, the latter of which suffered flood damage due to a preventable incident.

The agent affirmed that the building caretaker, before they resigned, advised them that the tenant has been heard yelling threats of harm to random people off their balcony, which was supported by several of the tenants who complained to the agent about this tenant. In addition, the agent testified that they have been advised that the RCMP having attended the rental unit on a regular basis.

Finally, the agent affirmed that other tenants have advised them that unless the tenant is evicted, they will be forced to leave the building due to their fear of the tenant and all the problems associated with the tenant. The agent is seeking an order of possession to protect the safety of other occupants of the building and to ensure that the tenant does not further damage the rental unit and other units in the building.

Analysis

Based on the undisputed testimony provided by the agent during the hearing, and on a balance of probabilities, I find the following.

Section 56(2)(a) of the Act lists what could end a tenancy early and result in an order of possession as follows:

56(2)(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,

The burden of proof is on the landlord to provide sufficient evidence to meet the two-part test under section 56 of the Act as follows:

Part 1: Is there sufficient evidence to support that the tenant or a person permitted on the property by the tenant, has done anything listed in Section 56(2)(a)(i) to (v) listed above?

Part 2: If yes to Part 1 above, is there sufficient evidence to support that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a 1 Month Notice to take effect?

I have considered the agent's testimony and the fact that the building caretaker has since resigned from their position due to what the agent stated were all the problems caused by the tenant. In addition, I am satisfied that the tenant has put the landlord's property at significant risk due to a flood caused when the tenant passed out drunk, leaving the kitchen faucet on. I also accept that the tenant has been yelling threats from their balcony based on the complaints the agent stated he has received.

As a result, I find the landlord has met part 1 of the 2-part test. Regarding part 2, I am satisfied, based on the flood damage to two units below the rental unit, the negative impact the tenant is having on other tenants in the building including threats to other occupants, and also considering the number of times the RCMP have attended the rental unit, that it would be unreasonable and unfair to the landlord and the other occupants of the building to wait for a 1 Month Notice for Cause under section 47 of the Act to take effect.

Therefore, pursuant to section 56 of the Act, I find the tenancy ended on the date of this hearing, **December 2, 2022. I grant** the landlord an order of possession for the rental unit effective **two (2) days** after service on the tenant.

As the landlord's application had merit, I grant the landlord the recovery of their **\$100** filing fee pursuant to section 72 of the Act. I authorize the landlord to immediately deduct \$100 from the tenant's security deposit of \$475 in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 38, 62(3) and 72 of the Act. Pursuant to sections 38 and 62(3) of the Act, I find that the tenant's security deposit balance is \$325 effective immediately.

Conclusion

The landlord's application under section 56 of the Act is fully successful.

The tenancy has ended early on this date, December 2, 2022.

The landlord has been granted an order of possession for the rental unit effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced through the Supreme Court of British Columbia.

The landlord has also been authorized to deduct \$100 from the tenant's security deposit. The tenant's security deposit balance is now \$375, effective immediately.

I caution the tenant that if they fail to comply with the order of possession, they can be held liable for all enforcement costs, including but not limited to, court fees and bailiff costs.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 2, 2022

Residential Tenancy Branch