



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

The hearing dealt with the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* (the "Act"), for an early termination of the tenancy, an Order of Possession and recovery of the filing fee for their Application.

The Landlord attended the hearing along with a witness, P.L. No party attended for the Tenant. Attending parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, to call witnesses and to make submissions.

The Landlord confirmed they served the Tenant with the Notice of Dispute Resolution and their evidence (the "Materials") by attaching it to the door of the rental unit on February 8, 2023. P.L. corroborated this testimony. It was noted that on the Proof of Service (form RTB-9) provided by the Landlord they had described the documents served to the Tenant as "Form RTB-9" which is the proof of service document itself. This was confirmed by the Landlord to be a typographical error, and it was in fact the Materials that were served to the Tenant on February 8, 2023.

I find that the Landlord's Materials were served in accordance with section 89 of the Act.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to recover the filing fee for the Application from the Tenant?

Background and Evidence

The attending 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 produced a Ministry of Social Development and Poverty Reduction Shelter Information form as evidence which clearly stated it is not a tenancy agreement. The Landlord testified there was no written tenancy agreement in place as the Tenant would not sign one.

When expanding on this point, the Landlord confirmed they had previously rented to the Tenant's mother for a period of five years and they had been a very good tenant. The previous tenant had asked if the Landlord would be willing to rent to their daughter. As the previous tenant had been a good tenant, the Landlord agreed.

The Landlord confirmed the Tenant took occupancy in November 2022. The Tenant paid the full amount of rent due for November 2022 which was \$1,250.00. A partial payment of \$1,000.00 was received for the month of December 2022 and no rent has been received since. No security deposit or pet damage deposit were taken.

The Act defines a tenancy agreement as: "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities."

Based on the parties undisputed testimony, I find there is a tenancy agreement between applicant and respondent.

The Landlord stated they are requesting an early end to tenancy on the basis that considerable damage had been done to the rental unit, which is a basement unit, and they have concerns for the safety of occupants of the residence above the rental unit, including their six-year-old granddaughter.

The Landlord testified that they recently served a 24-hour notice to enter the rental unit and carried out an inspection. They found damage throughout the unit including walls and doors kicked in, black spray paint graffiti on walls, cigarette burns on the floor, axe holes in a wall, broken windows which "street people" had apparently used to come in

and out and dog feces on the floor. They also stated two people were found in one bedroom who were under the influence of drugs and “like zombies”.

When trying to inspect the bathroom they noticed a person was occupying it and they took 30 minutes to come out. When they emerged they were a “total zombie”. Two further people were found in the second bedroom where it was noted the walls were kicked in.

The Landlord testified that five days ago a mattress was set on fire outside the property.

The Landlord directed me to photographs taken during the visit that were submitted as evidence and stated they estimate the damage will cost \$30,000.00 to repair.

Analysis

The Landlord requests an early end of the tenancy under section 56 of the Act. A Landlord may end a tenancy early under this section 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;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- 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.

The grounds as set out above are echoed in section 47 of the Act which confirms how a landlord may end a tenancy for cause. The key difference between the two sections is that under section 56 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 the effective date of a one month notice to end tenancy for cause to take effect.

Early end of tenancy is an expedited and uncommon method of ending a tenancy and as confirmed by policy guideline 51, the onus is on the landlord to provide sufficient evidence to prove that on the balance of probabilities, the tenant committed the serious breach.

The director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property to wait for a notice to end the tenancy for cause to take effect. Without sufficient evidence the application will be dismissed. Examples of breaches referred to in the policy guideline 51 include violent acts committed by a tenant.

I have considered the testimony of the Landlord and reviewed the photographic evidence they provided. The photographs show extensive damage throughout the rental unit by way of holes in numerous walls and doors, graffiti and damage which appears to have been caused by axes being thrown at a wall.

I find that in light of this evidence, the Landlord has established that the Tenant, or a person permitted on the residential property by the Tenant has caused extraordinary damage to the residential property.

There is also evidence of illegal activity, namely drug use on a significant scale. In light of this I find that the Landlord has established the Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that both caused or is likely to cause damage to the Landlord's property and 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, namely the occupants of the suite above the rental unit.

The level of damage is widespread throughout the unit, significant in impact and appears to be deliberate in nature, not to mention the likely costly to repair, and there is significant potential for the Tenant's breaches to detrimentally affect residents in the upper rental unit. Given this, I find that it would be unreasonable for the Landlord and the other occupants to wait for a One Month Notice To End Tenancy to take effect.

I thus order that the tenancy ends February 23, 2023 and that the Landlord is entitled to an Order of Possession.

Conclusion

The tenancy is ended on February 23, 2023.

The Landlord has established they are entitled to an Order of Possession in accordance with section 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.

It is the Landlord's obligation to serve the Order of Possession on the Tenants. 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.

As the Landlord was successful in their application, I find they are entitled to the return of the filing fee. In accordance with section 72(1) of the Act I order the Tenant to pay the Landlord's filing fee. I grant the Landlord a Monetary Order in satisfaction of this payment order. It is the Landlord's obligation to serve the Monetary Order. If the Tenant does not comply with the Monetary Order, it may be filed by the Landlord with 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: February 24, 2023

Residential Tenancy Branch