



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.

In attendance for the Landlord was S.D. in addition to observing parties W.D., M.P. and P.K. Both Tenants, C.B. and K.C., were in attendance. All 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 Tenants with the Notice of Dispute Resolution and their evidence (the "Materials") by registered mail on January 31, 2023. The Tenants confirmed receipt of the Materials. I find that the Landlord's Materials were served in accordance with section 89 of the Act. The Tenants put forward no documentary evidence of their own.

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 Tenants?

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 parties agreed that the tenancy started on April 1, 2022, that rent is \$2,018.00 per month due on the first of the month and that the Landlord currently retains a security deposit of \$499.00. No pet damage deposit was taken.

When asked if there were any other disputes before the Branch that involved the parties, the Tenant provided a dispute number relating to a hearing scheduled for May 1, 2023. It is noted at that hearing the Tenants seek to cancel a One Month Notice to End Tenancy for Cause served by the Landlord. Parties were informed that if the Landlord's Application was successful, that the hearing on May 1, 2023 would be moot as the tenancy would have ended early.

The Landlord stated they are requesting an early end to tenancy on the basis that there have been multiple cases of misconduct by one of the Tenants which have escalated in the month of January 2023 and resulted in aggressive behaviour to members of staff and other tenants, and damage to the building in which the rental property is situated, including breaking the elevator twice.

The Landlord stated they were unable to share evidence relating to all of the incidents, but they believe there had been fifteen visits by police to the rental property caused by the Tenant.

I was directed to a police report submission and a Tenant Incident Report document which related to an incident on January 7, 2023. The Landlord states the Tenant was looking for their toolbox and was acting in an aggressive and threatening manner which resulted in the site manager W.D. having to lock themselves in their office and call the police. By way of background, the Landlord stated the Tenant had been asked not to keep wood and tools next to their parking stall. As a result, their staff had removed the tools and put it in the maintenance room for safe keeping so the Tenant to collect them later. The Landlord stated tenants were not allowed to use the parking stalls to work and that power tools had been causing disturbances at all hours and they wanted to keep the area clean. When the police arrived W.D. provided them the toolbox to return to the Tenant.

The Landlord directed me to evidence regarding a report to police relating to two incidents of vandalism to the elevator in the building caused by the Tenant on January 16, 2023 and again on January 23, 2023. The Landlord states the Tenant broke the elevator twice. Video footage of only the latter incident was submitted. The Landlord stated they were unsure of the storage capacity the Residential Tenancy Branch has in regard to videos, so only uploaded video relating to the incident on January 23, 2023. The video shows the Tenant K.C. kicking the control panel of the elevator and the lights subsequently going out. After the second incident the Landlord stated a contractor quoted a fee of \$10,000.00 for the panel to be reinstalled.

The Landlord also referred to two incident reports relating to a matter which occurred on January 11, 2023 where two tenants in the building were purportedly threatened by the Tenant K.C. when they were looking for wood thought to have been removed from their parking stall. The incident was reported in two separate reports, both submitted on January 16, 2023 by the two affected tenants. One report states it took half an hour to calm the Tenant down after they entered their suite and the other report states the Tenant threatened to kill them if they did not return the Tenants lumber.

In response to submissions regarding the incident that took place on January 7, 2023 the Tenant stated they came back to their parking stall to find their toolbox was missing. They admitted they were upset it had been taken and that they did go to talk to the Site Manager, W.D. about the whereabouts of the toolbox, but that they did not make any threats to the life of anyone. They stated the notification regarding the removal of the tools was sent by email and they had not seen the message at the time of the incident, so did not know where the toolbox was at this point so thought to contact the Site Manager first. The Tenant put forward that if they had indeed made threats to the life of staff, the police would have likely charged them, which they have not.

The Tenant stated they were under the impression that they were allowed to work at their parking stall and that if the staff did not see it, it was allowed.

Regarding the incidents in which the elevator was damaged, the Tenant agreed they did kick the control panel and stated they were upset after they noticed tools missing again.

In relation to the incident on January 11, 2023, the Tenant disputed the details on the incident reports saying that it did not take half an hour to calm him down and they were only talking for five minutes. They agreed that again, the issue of pieces of wood and

missing tools was the cause of the incident but that no threats to life were made. The Tenant reiterated that if there had been threats to life they would have been charged by police and drew my attention to the time taken to report the matter.

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 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.

In respect of the incidents on January 7, 2023 and January 11, 2023, both of which involve purported aggressive behaviour and threats to life from the Tenant, the Landlord produced third-party evidence by way of incident reports. I find it noteworthy that though W.D., who was involved in the incident on January 7, 2023 was present at the hearing, they were not called as a witness by the Landlord to corroborate the contents of the incident report.

The Tenant drew attention to inconsistencies in the third-party written testimony and I give greater weight to the Tenant's testimony overall regarding the incidents and find that the Landlord has not proven a serious enough breach of the Act that would render it unreasonable or unfair for the effective date of a notice to end tenancy for cause to take effect. The delay in reporting the incidents also leads me to conclude the seriousness of the incidents on January 7, 2023 and January 11, 2023 do not warrant an early end to tenancy.

However, I have reviewed the video evidence provided by the Landlord with respect to the damage to the elevator which occurred on January 23, 2023. It shows an individual which the Tenant confirmed was themselves entering the elevator and kicking the wall where the control panel is, the lights in the elevator then fail and the Tenant exits.

I find that in light of this evidence, the Landlord has established that the Tenants caused extraordinary damage to the residential property. Given the scope and cost of the damage, and the fact that two such incidents of vandalism occurred within a short space of time, 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 22, 2023 and that the Landlord is entitled to an order of possession.

Conclusion

The tenancy is ended on February 22, 2023.

The Landlord has established they are entitled to an Order of Possession in accordance with section 56 of the Act. The Tenants shall provide vacant possession of the rental unit to the Landlord within two (2) days of receiving the order of possession.

As the Landlord was success 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 Tenants pay the Landlord's filing fee. In accordance with section 72(2) of the Act I authorize the Landlord to retain \$100.00 from the security deposit.

It is the Landlord's obligation to serve the Order of Possession on the Tenants. If the Tenants do 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: February 23, 2023

Residential Tenancy Branch