Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET

Introduction

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied to end the tenancy early and for an Order of Possession.

This Application for Dispute Resolution was the subject of a dispute resolution hearing on June 06, 2022. On June 07, 2022 a Residential Tenancy Branch Arbitrator granted the Landlords' application for an early end to the tenancy and that Arbitrator granted the Landlords an Order of Possession.

The Tenants applied for a judicial hearing and on June 16, 2022 Madam Justice Lyster of the Supreme Court of British Columbia set aside the decision and Order of June 07, 2022.

The original Application for Dispute Resolution was returned to the Residential Tenancy Branch for a new hearing. This hearing will address the Landlords' application to end the tenancy early and for an Order of Possession and this decision replaces the decision of June 07, 2022.

The male Landlord stated that on April 27, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in April of 2022 were sent to each Tenant, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 16, 2023 the Landlords submitted additional of evidence to the Residential Tenancy Branch. The male Landlord stated that this evidence was served to the

Tenants, via registered mail, on January 16, 2023. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On May 27, 2022, June 01, 2022, and June 03, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlords, via registered mail, prior to the hearing on June 06, 2022 but it is her understanding this evidence was not received by the Landlords because she had addressed the package incorrectly. The female Landlord stated that she believes this evidence was received by the Landlords prior to the hearing on June 06, 2022.

On January 18, 2023, the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant this evidence and all of the evidence previously submitted to the Residential Tenancy Branch by the Tenants was sent to the Landlords, via registered mail, on January 18, 2023. She stated that the evidence previously submitted to the Residential Tenancy Branch was re-served to the Landlords because she understood it had not been received by them. The Landlords acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties have submitted an abundance of evidence for these proceedings. Although all of the aforementioned evidence has been reviewed, it is only referenced in this decision if it is directly relevant to this decision.

On January 30, 2023 the Tenants submitted additional documents to the Residential Tenancy Branch. The female Tenant stated that these documents were not served to the Landlords. As these documents were not served to Landlords, they were not accepted as evidence for these proceedings. The Residential Tenancy Branch Rules of Procedure and the principles of procedural fairness prevent me from considering documents that have not been served to the other party as evidence for these proceedings. Regardless of why these documents were not served, I cannot consider documents that are not served to the other party as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to end this tenancy early and to an Order of Possession on the basis that the tenancy is ending early, pursuant to section 56(1) of the *Residential Tenancy Act (Act)?*

Background and Evidence

The Landlords and the Tenants agree that:

- this tenancy began on March 01, 2022;
- the Tenants agreed to pay rent of $2,000.00 by the first day of each month;
- the parties agreed that if the Tenants did not wish to use the garage, the rent would be $1,700.00;
- the Tenants opted to rent the garage;
- the Tenants were advised they could use the freezer in the garage and a freezer in the basement for the duration of the tenancy;
- when the Tenants moved into the rental unit, the unit was not clean and there was a large amount of personal property left in the house, garage and on the exterior of the rental unit;
- numerous photographs submitted in evidence fairly depict the condition of the interior and exterior of the rental property at the start of the tenancy;
- on March 03, 2022 the Tenants expressed concern about the condition of the rental unit;
- on March 04, 2022 the Tenants informed the Landlords that they must have their personal property removed from the house and garage by March 31, 2022;
- on March 04, 2022 the Landlords moved some property from the house and exterior of the rental property;
- on March 07, 2022 the Landlords moved all of the property from the “left side” carport;
- in April of 2022 the Landlords emptied the freezer the Tenants had moved from the garage;
- on April 22, 2022 the Landlords moved the boat and many items that the Tenants had placed in the carport that housed the boat;

- sometime in September of 2022 the Landlords moved some items out of a basement storage area and they cleaned the freezer in the basement;
- the freezer that had been in the garage in now outside near the shed;
- on March 15, 2022 the Landlords told the Tenants to return the Landlords' property to the garage;
- the Tenants did not comply with the Landlords' direction to return the property to the garage;
- on March 31, 2022 the Landlords served the Tenants with a One Month Notice to End Tenancy for Cause, which declared that the rental unit must be vacated by May 01, 2022;
- the One Month Notice to End Tenancy for Cause was served for the reasons the Landlords are requesting an early end to the tenancy;
- the Tenants applied to cancel the One Month Notice to End Tenancy for Cause; and
- at the hearing in which the merits of the One Month Notice to End Tenancy for Cause were to be considered, the Arbitrator declined to consider the One Month Notice to End Tenancy for Cause as he understood an Order of Possession had already been granted on the basis of the Landlord's application for an early end to the tenancy.

The male Landlord stated that the rental unit was not left in clean condition because both Landlords had contracted COVID in the month prior to the start of the tenancy.

The Landlords are attempting to end this tenancy early, in large part, because the Tenants moved property out of the rental unit and allegedly damaged it.

The female Landlord stated that the Tenants were advised that the Landlord would have their property moved by March 31, 2022. The female Tenant stated that the Landlords did not confirm their property would be moved by March 31, 2022.

The male Landlord stated that on March 15, 2022 he removed some items from inside the garage and some items from which had been removed out of the garage by the Tenants. The female Tenant stated that the Landlords moved a few things from the garage but the Landlord did not move anything that was outside of the garage.

The male Landlord stated that on March 31, 2022 he went to the property and found more items had been moved out of the garage to the carport by the Tenants and he

moved some of those items from the carport. The female Tenant stated that nothing was removed from the property on March 31, 2022.

The male Landlord stated that on, or about, May 01, 2022 he removed some garbage from the yard of the rental unit and he moved a freezer and some metal locks to the side of the garage, which the Tenants hade moved out of the garage.

The female Tenant stated that on May 03, 2022 the Landlord moved most of the remaining items out of the carport that had housed the boat and the Landlord cleaned up the yard.

The male Tenant stated that on March 14, 2022 the Tenants began moving items out of the garage. The male Landlord stated that he moved these items in an attempt to help the Landlords remove their property, as he knew they were coming on March 15, 2022. The male Landlord stated that on March 15, 2022 he discovered that items had been moved out of the garage.

The female Tenant stated that the Tenants continued to move items from the garage to the carport on March 16, 2022, March 17, 2022, and March 18, 2022. She stated that a few more items were moved after March 18, 2022, but most items had been moved by that date. The male Landlord stated that although he is not certain of when items were moved, but the Tenants continued to move items after March 15, 2022.

The female Tenant stated that they continued to move items after the Landlords directed them to stop on March 15, 2022 because they needed to unpack, they needed to secure their items inside the garage, and they needed to access tools they had packed. The male Tenant stated that they continued to move items after March 15, 2022 because they believed they were “helping” the Landlord.

The male Landlord stated that some of the Landlords property was damaged when it was moved by the Tenants. He stated that the Tenants removed two paintings that had

been stored in the rafters of one of the carports and that he later found the paintings on the ground, damaged by the rain.

The female Tenant stated that they moved two paintings from the rafters and placed them on top of the boat in the other carport. She acknowledges that it is possible they were blown off the boat by the wind.

The male Landlord stated that the Tenants removed a ceiling fan and left it outside exposed to the element. The male Tenant stated that he moved this item to the carport and that he did not leave it exposed to the elements. The Tenants submit that the ceiling fan in the Landlords' photograph was moved to that location from the carport by the Landlords.

The male Landlord stated that the Tenants removed a stereo and two speakers from the garage. He stated that he cannot recall if the speakers were sitting on shelves or if they were attached to the wall with brackets. He stated that the speaker wires were cut and the stereo was left on a pile outside that was exposed to the elements.

The male Tenant stated that he unplugged the speaker wires and that he did not cut them. He stated that the speakers were sitting on shelves and were not permanently attached to the wall. He stated that on March 15, 2022 he moved the stereo from the garage to a pile outside and by the end of the day he had moved it to the carport.

The Landlords and the Tenants agree that the Tenants removed a "vacuum system" which is used to extract construction dust from the garage. The male Landlord stated that this system was attached to the counter with "strapping" and the male Tenant stated that it was simply sitting on the counter. The male Tenant stated that the system, including the pvc piping, was removed because it was filthy.

The Landlords and the Tenants agree that the Tenants removed wooden shelving from various locations in the garage. The Landlords contend that these were "ripped" from the walls and discarded. The Tenants contend that the wooden shelving was simply lifted off their brackets and discarded.

The Landlords and the Tenants agree that the Tenants dismantled moved a gazebo which had been left on the property. The male Landlord stated that on March 31, 2022

he found the gazebo “crumpled” on the ground beside the shed and the red cloth gazebo cover was used to cover a pile of personal items.

The female Landlord stated that photograph of the gazebo after it was moved, which was submitted in evidence by the Landlords, show that one of the legs of the gazebo is broken.

The female Tenant stated that the gazebo was not damaged when it was dismantled and the red cloth cover was used to cover a pile of personal items. She stated that the photograph of the gazebo when it was upright, which was submitted in evidence by the Tenants, show that the leg of the gazebo was damaged prior to the gazebo being dismantled.

The male Landlord stated that a grandmother clock was damaged when it was moved by the Tenants, as shown in the Landlords’ photograph.

The male Tenant stated that he did not notice the clock when he was moving the Landlords’ property but it may have been in box and was inadvertently damaged when he was moving boxes.

The Landlords and the Tenants agree that the Tenants removed decorative “stickers” from walls inside the house and that they painted one wall a dark color.

The male Landlord stated that prior to the start of the tenancy the Tenants were told that they could not use a shed on the property, which was locked by the Landlord. The female Tenant stated that they were told they would have access to the shed.

The female Tenant stated that a third party broke the lock on the shed so the Tenants replaced the lock and have not yet provided the Landlords with the key. Both parties stated they are not using the shed at this time, although there are items belonging to the house stored in the shed.

The Landlords contend that the Tenants have harassed the Landlords and have been belligerent in their electronic communications.

The male Landlord stated that the male Tenant has threatened him. When asked to provide an example of threatening language used by the Tenants the male Landlord stated that the male Tenant told him that social media was a great way to “slander slum

landlords". The male Landlord stated that the male Tenant also told him that he hoped the Landlords had boat insurance, which he interpreted as a threat that the Tenant would harm his boat.

The Landlords and the Tenants agree that some compensation was offered to the Tenants for cleaning the rental unit, however the Tenants did not believe the compensation offered was sufficient.

The female Landlord stated that the Landlords offered to reduce the rent by $300.00 for one month in compensation for property being left in the garage in March of 2022. The female Tenant stated that she did not realize this offer was for not being able to use the garage for March of 2022. The female Tenant stated that she believed the Landlord was offering to rent the house to the Tenants, without the use of the garage, for the duration of the tenancy for reduced monthly rent of $1,700.00.

The male Landlord stated that much of the Landlords' property was left in the elements and was not properly protected by the Tenants. The female Tenant stated that the property that had value was protected by tarps.

Analysis

I find that both parties breached their obligations to the other party.

On the basis of the undisputed evidence, I find that the rental unit was not clean at the start of the tenancy and, more importantly, a large amount of personal belongings had not been removed from the property.

While I accept that the Landlord's did not properly clean the unit and remove personal items due to illness, the fact remains that they did not comply with their obligation to provide a reasonably clean rental unit, free of personal belongings, to the Tenants at the start of the tenancy. While I understand their illness likely prevented the Landlords from properly preparing the unit for the tenancy, they had the option of hiring a third party to assist them in meeting this obligation.

It is clear that the Landlords applied to end this tenancy early because of the manner in which the Tenants handled the Landlords' property that was left at the rental property. As the attempt to end the tenancy early is not related to the cleanliness of the interior of the rental unit, I do not need to address that issue.

Given the amount of property left on the rental property, as shown by the photographs, I find this was a breach of the Tenants' right to the quiet enjoyment of the rental unit. I find that an excessive amount of personal property was left on the property and that the number of items in the garage essentially rendered that space unusable by the Tenants.

The undisputed evidence is that by March 04, 2022, the Tenants had asked the Landlords to remove personal items from the residential property and they informed the Landlords that they must have their property removed from the rental property by March 31, 2022.

As there is no evidence that the Tenants revoked their agreement that the Landlords could have until March 31, 2022 to remove their property, I find it was unreasonable for the Tenants to begin moving the Landlord's property prior to March 31, 2022. On the basis of the undisputed evidence, I find that by March 15, 2022 the Tenants had begun moving the Landlord's personal property, which is a breach of the agreement they made with the Landlord.

While I accept the female Tenant's testimony that they needed to move the Landlord's property from the garage so they could use it, I find the appropriate response would have been to wait until March 31, 2022 and to seek compensation for any resulting loss of quiet enjoyment of the unit. Whether the Tenants are entitled to such compensation is not a matter to be determined at these proceedings.

I find the male Tenant's testimony that they continued to move property from the garage after March 15, 2022 because he thought they were helping is highly unbelievable. Given the conversations between the parties, I find it unlikely that any reasonable person would conclude that it was "helpful" to continue to move items from the garage.

On the basis of the undisputed evidence, I find that the Landlords made some efforts to remove property from the residential property after March 04, 2022. Specifically, I find that they moved some items on March 07, 2022, March 15, 2022, April 22, 2022, May 01, 2022 or May 03, 2022, and sometime in September of 2022. I find that these efforts to remove property from the residential property were inadequate. Although the Landlords were given until March 31, 2022 to remove the property, it is clear they were still moving items in September of 2022. The fact the Landlords did not finish moving items from the property until September of 2022, they did not empty the contents of a freezer in the garage until April of 2022, and they did not clean the basement freezer

until September of 2022 demonstrates, in my view, a serious disregard for the Tenants' right to quiet enjoyment.

On the basis of the undisputed evidence, I find that the Tenants moved two large paintings that had been stored in the rafters of the carport, which were subsequently damaged from being exposed to the elements. Even if I concluded that the Tenants did not properly care for these items, I cannot conclude that the paintings had any significant commercial value. In reaching this conclusion I was influenced, to some degree, by the photograph that shows they were stored, uncovered, on top of building scraps. This is not the manner in which people typically store valuable art.

On the basis of the undisputed evidence, I find that the Tenants removed a fan from the ceiling of the garage. I find that the Tenants knew, or should have known, that they should not remove a fan that is attached to the ceiling. This is typically considered a fixture that is to be left in place during the tenancy.

Regardless of whether the fan was damaged when it was moved by the Tenant, I find, on the basis of a photograph of the ceiling fan, however, that it had little commercial value. The fan appears old and is very dirty.

On the basis of the undisputed evidence, I find that the Tenants moved an old stereo and speaker from the garage. On the basis of the photographs of the speakers in the carport, I cannot conclude that the speakers were stored inappropriately by the Tenants. Although the Landlord submitted a photograph that shows the stereo on what appears to be a junk pile, I find it entirely possible that it was subsequently safely stored by the Tenants, as the Tenants content, given that the speakers were stored in a reasonable manner.

On the basis of the undisputed evidence, I find that the Tenants removed a vacuum system from the garage which one would typically not expect to be removed during a tenancy. On the basis of the photographs, however, I find that this system was very dirty and that it was not unduly damaged as a result of it being moved. On the basis of the cleanliness of that system, it appears likely that it needed to be dismantled to facilitate a proper cleaning. I therefore find that no significant damage occurred to the system, although I recognize there will be a cost to rebuild the system.

On the basis of the undisputed evidence, I find that the Tenants removed the old wood shelving from the garage. I find that the Tenants knew, or should have known, that they

should not remove the shelving, as shelving is typically considered a fixture that is to be left in place during the tenancy.

As the photographs show that the shelving was relatively old, I find that it had limited commercial value, although I recognize there will be costs associated to purchasing new material and installing new shelves.

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and the Landlord may apply for an Order of Possession for the rental unit. Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

While I accept that some of the Landlord’s property may have been damaged when it was moved by the party I find, based on the age and condition of most of that property, any damage that occurred does not constitute extraordinary damage. I therefore cannot

conclude that the Landlords have grounds to end this tenancy, pursuant to section 51 of the *Act*, because the Tenants have caused extraordinary damage to the property.

While I accept that the Tenants painted a wall a dark color and removed decorative "stickers" from the wall, this does not constitute extraordinary damage and would not be grounds for ending this tenancy pursuant to section 56(1) of the *Act.*

On the basis of the undisputed evidence, I find that the Tenants moved a gazebo that had been left on the property.

I have viewed the photographs of the gazebo that were taken by the Tenants prior to the gazebo being moved and find that the frame of the gazebo was not in good condition prior to it being moved. Although there does appear to be additional damage to the frame of the gazebo after it was moved, I cannot conclude that the additional damage, if present, would constitute extraordinary damage, given the pre-existing damage. I therefore find that any damage to the gazebo would not be grounds for ending this tenancy pursuant to section 56(1) of the *Act.*

I note that the fact the Tenants used the cloth cover of the gazebo to cover items left outside is largely irrelevant, given that the cover was left in the elements by the Landlords prior to the start of the tenancy.

There was much discussion about the Tenants moving a freezer and small refrigerator from the garage to various locations and the undisputed evidence is that those items are still being stored beside the shed. Given that the freezer was not even empty at the start of the tenancy and they are relatively old, I find that any damage that the Tenants have caused to those items does not constitute extraordinary damage.

On the basis of the photographic evidence, I find that a grandmother clock was damaged. I find it highly likely this was damaged when the Tenants were moving the Landlord's property, although I cannot conclude that the damage was intentional. As has been previous stated, I do not consider this damage to be extraordinary damage.

The parties discussed other items that were allegedly damaged by the Tenants when they were moved, such as bird cages and railing lights. These "smaller" items are not being addressed in this decision as I would not conclude that any of them constitute extraordinary damage.

While I do not believe any of the alleged damage is cause to end this tenancy pursuant to section 56(1) of the *Act*, I find that the Landlords have every right to file an Application for Dispute Resolution seeking compensation for damaged property and for the cost of replacing items such as the vacuum system, ceiling fan, and shelving.

On the basis of the photographs submitted in evidence, I find that the Tenants made at least some effort to protect the Landlords' personal property, as they erected a tarp in front of the carpet. Whether those efforts were adequate is an issue to be determined in the event the Landlords seek compensation for damage to their property.

While I accept that the Tenants removed many personal items from the home and garage, I cannot conclude that the tenancy should end as a result of those actions. The Tenants would not have needed to move the personal items if the Landlords had ensured those items were moved prior to the start of the tenancy. Had the Landlords moved them in a timelier manner, the Tenants would not have needed to move them.

While it is apparent that the Landlords are extremely disturbed by the actions of the Tenants, I find that those actions were precipitated by the Landlords breaching the Tenants' right to quiet enjoyment. I therefore find that, in these unique circumstances, the Landlords do not have the right to end this tenancy on the basis that they were disturbed by the resulting actions of the Tenants.

I find these to be highly unique circumstances, where both parties have acted highly inappropriately. I therefore find that it would not be appropriate for the tenancy to end on the basis of the Tenants' inappropriate response to the Landlords' inappropriate behaviour.

In these very unique circumstances, I find that the appropriate remedy available to the Landlords is to file an Application for Dispute Resolution in which they claim compensation for the cost of any damaged property and/or the cost of replacing items the Tenants should not have removed, presuming the Tenants do not replace those items in due course.

I have reviewed the many electronic communications exchanged by the parties. While I accept that some of the comments made by the male Tenant in those communications were inappropriate, I find that it was also inappropriate for the female Landlord to call the male Tenant a "bully". Given that both parties communicated in an unprofessional manner, I find that the comments made by the Tenants are not grounds to end the

tenancy on the basis that the comments significantly interfered with or unreasonably disturbed the Landlords.

While the comment about hoping the Landlords' have boat insurance could have been intended to intimidate, I am not satisfied that they were intended as a direct threat and I find that they fall short of what would unreasonably disturb most people. Although the comment about using social media to slander slum landlords could also have been intended to intimidate, I am not convinced that exposing the condition of the rental unit at the start of the tenancy would constitute slander. I therefore cannot conclude that either of these comments are grounds to end the tenancy on the basis that they significantly interfered with or unreasonably disturbed the Landlords.

To provide some stability to the future of this tenancy, I caution both parties that their future communications should be civil. In the event the Tenants communicate in an inappropriate manner in the future and the Landlords communicate professionally, that may be grounds for the Landlords to end the tenancy pursuant to section 47 of the *Act*.

After considering all of the above, I find that the Landlords have failed to establish grounds to end this tenancy pursuant to section 56(1) of the *Act*. I therefore dismiss the application to end this tenancy early and for an Order of Possession'

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

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 03, 2023

Residential Tenancy Branch