



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INFLUENT GROUP HOLDINGS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 9:49 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. The landlord, represented by agents JL (the landlord) and PH, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness MP also attended. 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, her witness and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

The landlord and witness MP affirmed that on January 12, 2023 they served the notice of hearing and the evidence (the materials) to tenant HP in person. HP refused to receive the materials package addressed to JF, so the landlord left the package addressed to JF in the rental unit’s mailbox located next to the front door, as it was raining. The landlord informed HP that she left the package addressed to JF in the

mailbox. The landlord submitted a photograph of the package addressed to JF in the mailbox and two witnessed proof of service forms (RTB9).

Based on the convincing testimony offered by the landlord and witness MP, and the witnessed proof of service form, I find the landlord served tenant HP in accordance with section 89(2)(a) of the Act.

Section 71(2)(c) of the Act states:

In addition to the authority under subsection (1), the director may make any of the following orders:

[...]

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Based on the convincing testimony offered by the landlord and witness MP, the photographs and the witnessed proof of service form, I find the landlord sufficiently served the materials to tenant JF on January 12, 2023.

Section 90 of the Act provides that a document left in the mailbox is deemed served on the third day after it is left in the mailbox. Tenant JF is deemed to have received the materials on January 15, 2023, in accordance with section 90(c) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of a tenancy, pursuant to section 56; and
2. an authorization to recover the filing fee for this application, under section 72.

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the ongoing tenancy started on June 01, 2022. Monthly rent is \$2,00.00, due on the first day of the month. The landlord collected a security deposit (the deposit) in the amount of \$1,000.00 at the outset of the tenancy and currently holds it in trust. The tenancy agreement was submitted into evidence.

The landlord affirmed the tenants accumulated large amounts of garbage in the rental unit's garage and yard. The piles of garbage are a threat to the health and safety of other tenants and neighbours.

Witness MP affirmed the downstairs tenant complained that rats are entering her rental unit because of the garbage accumulated in the tenant's rental unit.

The landlord noticed the tenant started accumulating larger amounts of garbage around Christmas 2022 time.

The landlord received a warning letter from the local government because of the large amount of garbage in the rental unit on January 06, 2023. It states:

A complaint has been received by our office regarding the accumulation of household garbage and rubbish on the above property. Upon inspection, a sufficient quantity was noted to require removal by you.

The City of [redacted for privacy] imposes a duty upon the owner or occupier of real property to keep their land free of such an accumulation and to properly dispose of the same. All household garbage should be stored in appropriate containers and removed on a regular basis.

Therefore, we request that you remove all garbage and waste from your property within 48 hours of receipt of this notice.

The landlord asked the tenants to remove the garbage and they refused to do so.

On January 10, 2023 the landlord took the photographs submitted into evidence, which show large amounts of garbage in the garage, yard and front door.

The landlord submitted this application on January 11, 2023.

Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

- (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.

Residential Tenancy Branch Policy Guideline 51 states:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or

- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the undisputed and convincing testimony offered by the landlord, witness MP, the January 06, 2023 letter and the photographs, I find, on a balance of probabilities, pursuant to section 56(2)(a)(ii) of the Act, the tenants seriously jeopardized the health of other tenants and neighbours by accumulating large amounts of garbage in the rental unit.

If the landlord issued a notice for cause under section 47 of the Act because of the large amounts of garbage in the rental unit, the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenant. I find that pursuant to section 56(2)(b), it would be unreasonable for the landlord to wait to end the tenancy by issuing a notice for cause due to the significant threat to the health of other tenants and neighbours caused by the tenants.

I grant an order of possession effective two days after service on the tenant, pursuant to section 56(2) of the Act.

As the landlord is successful in this application, the landlord is entitled to recover the filing fee.

I warn the tenants that they may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

Pursuant to section 56(2) of the Act, I grant an order of possession to the landlord effective **two days after service of this order**. The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants fail to comply with this order, this order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the deposit to recover the filing fee.

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 07, 2023

Residential Tenancy Branch