



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 9:57 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. Landlord GB, assisted by agent GU (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witnesses HB and MM 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 witnesses 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."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on February 17, 2023, in accordance with section 89(2)(b) of the Act. The landlord mailed the package to the rental unit's address. The tracking number is recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on February 22, 2023, in accordance with section 90(a) of the Act.

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

Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of a tenancy; and
2. an authorization to recover the filing fee.

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 in October 2022. Monthly rent in the amount of \$900.00 is due on the first day of the month. The landlord collected a security deposit (the deposit) in the amount of \$450.00 at the outset of the tenancy and currently holds it in trust. The tenancy agreement was submitted into evidence.

The rental unit is adjacent to the landlord's house. The landlord, GB and witness HB occupy the landlord's house.

The landlord served a one month notice to end tenancy dated December 31, 2022 (the Notice) on December 31, 2022, as the tenant has been continuously smoking in the rental unit and the smoke pollution is significantly disturbing the landlord and the landlord's family. The effective date of the Notice is February 28, 2023. The landlord submitted an application for an order of possession based on the Notice, and the hearing is scheduled for June 02, 2023.

The landlord stated the tenant intentionally flooded the rental unit on January 4 and 5, 2023. The landlord verbally warned the tenant on January 6, 2023 to not flood the rental unit again.

The landlord and witness HB testified the tenant intentionally flooded the rental unit again on February 14, 2023. The flood caused by the tenant damaged the rental unit and the landlord's house. The landlord lost clothing worth more than \$2,000.00 because of the flood intentionally caused by the tenant. The landlord submitted photographs and a video recorded on January 06, 2023 showing the rental unit flooded and the kitchen faucet running when the tenant was not in the rental unit.

The landlord said the tenant has been smoking tobacco and marijuana in the rental unit. The smoke pollution significantly worsened after the landlord served the Notice, the landlord and his children are sick because of the smoke pollution caused by the tenant. The landlord affirmed that his children's teacher inquired the landlord why the children are smelling smoke. The landlord purchased three air purifiers and has been running them for 24 hours to address the smoke pollution.

The landlord submitted this application on February 14, 2023, as the landlord needed time to gather evidence to submit this application.

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 and witness HB, the photographs and the video, I find, on a balance of probabilities, pursuant to section 56(2)(a)(i) and (ii) of the Act, the tenant seriously interfered with the landlord by intentionally flooding the rental unit and seriously jeopardized the health of the landlord by continuously smoking in the rental unit after the landlord served the Notice.

If the landlord issued a notice for cause under section 47 of the Act because of the intentional flooding and worsening smoke pollution, 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 new notice to end tenancy for cause due to the significant interference and threat to the landlord's family health caused by the tenant.

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 tenant that he 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 tenant must be served with this order. Should the tenant 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: March 10, 2023

Residential Tenancy Branch