



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

On March 2, 2023, the Landlords made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing. The Tenant attended the hearing as well, with C.V. attending claiming to be the current tenant. C.V. was permitted to remain in the hearing until it was determined what his role was in this tenancy.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Landlord J.K. advised that the Notice of Hearing and evidence package was served to the Tenant by being attached to the door of the rental unit on March 7, 2023. Included was a signed proof of service document corroborating service. C.V. confirmed that this was received, and that he then notified the Tenant of this. The Tenant claimed that he only found out about this Application two days before the hearing. Regardless, as I am satisfied that this package was attached to the door on March 7, 2023, I find that the

Tenant was deemed to have received this package three days after it was posted. As such, this evidence will be accepted and considered when rendering this Decision.

The Tenant and C.V. confirmed that they did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an early end to this tenancy and an Order of Possession?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

J.K. advised that the tenancy started on September 15, 2017, that rent was currently established at \$2,200.00 per month, and that it was due on the fifth day of each month. A security deposit of \$1,100.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant confirmed that the tenancy started on September 15, 2017, that rent was established at \$2,200.00 per month, and that it was due on the fifth day of each month. As well, he acknowledged that a security deposit of \$1,100.00 was also paid. However, he claimed that he left the rental unit on November 15, 2021, and ended his tenancy. Although, no written notice to end his tenancy was ever given to the Landlords, but he claimed to have informed them verbally of such, at some unknown point. He also stated that he paid rent in the amount of \$2,250.00 on November 5, 2021, which does not make much sense if he vacated the rental unit on November 15, 2021. As well, he

testified that he never provided the Landlords with a forwarding address in writing as he had never received his security deposit back in any of his previous tenancies.

He claimed that he would personally pay the rent in full to the Landlords by cash or e-transfer. He acknowledged that he permitted C.V. to move in with him approximately one and a half years prior to November 15, 2021. He testified that the Landlords initiated a new tenancy with C.V. at the end of November 2021, and they required rent to be paid in the amount of \$2,600.00 per month.

C.V. advised that he personally started paying rent in the amount of \$2,650.00 to the Landlords in cash on December 1, 2021, and would pay this on the first of each month, but he would not receive any receipts. However, he did not submit any documentary evidence to substantiate his claims that he made any of these payments for rent. He then testified that he “personally” paid a security deposit of \$400.00 to the Landlords, but he was not “exactly sure” of this, and he was unaware of who paid any remaining balance of a security deposit, if one was paid at all. He stated that other people were living in the rental unit, but the Tenant was not.

J.K. advised that the last payment for rent that they ever received from anyone was from the Tenant in February 2022, by e-transfer. However, there was no documentary evidence submitted to corroborate this. She confirmed that the Tenant never ended his tenancy in writing, or verbally, and that they never created a new tenancy with any other persons. Although, she stated that the Tenant texted her in March 2022 that C.V. had moved in with him. While the last rent payment was allegedly paid by the Tenant in February 2022, she testified that they eventually served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent in July 2022. She then stated that no rent was paid and that they did not apply for an Order of Possession on this notice as they were confused. In my view, if rent was not paid since February 2022, it makes little sense why the Landlords did not take any action at all. Regardless, she submitted that no monies were ever received from the Tenant, or any other parties, since February 2022.

I find it important to note that a tenancy must be ended in writing pursuant to Section 45 of the *Act*. Given that the Tenant never served the Landlord with a notice to end his tenancy, clearly the Tenant did not comply with the *Act* if this was his intention. Furthermore, I am doubtful that the Tenant did end his tenancy as he never provided a forwarding address in writing to the Landlord. As the amount of \$1,100.00 is quite substantial, I am skeptical that the Tenant simply walked away from this and forfeited it.

As the Tenant's and C.V.'s submissions about how much rent was allegedly paid to the Landlord in 2021 were inconsistent, and as there has been no documentary evidence submitted to substantiate that C.V. or any other persons had ever paid monies to the Landlords or engaged in a new tenancy, I do not find that either of their testimony is credible or reliable. I am satisfied that C.V. was merely an occupant of the Tenant's tenancy. As such, he was informed that he must exit the hearing as there was no Landlord/Tenant relationship created between him and the Landlords. Ultimately, I am satisfied that the Tenant's tenancy was never ended in accordance with the *Act*, and the Tenant was advised that if he permitted other people to reside in the rental unit, he could be held responsible for their behaviours, even if he vacated the rental unit.

J.K. made submissions about why this Application was made; however, many of those submissions were not relevant or pertinent to this type of Application, and they are not reproduced here. However, she testified that Landlord M.L. went to the rental unit on February 22, 2023, and knocked on the door as he was seeking rent. She stated that an unknown occupant came to the door and punched him in the face. She submitted that he then called the police, that the police attended, and that the police apprehended this person, but they could not charge him as there was no witness to the alleged assault.

M.K. then corroborated J.K.'s testimony, and confirmed that he was punched in the face by an occupant in the rental unit.

The Tenant advised that he had heard about this incident two days ago, and that it was his understanding that M.K. tried to push his way into the rental unit. As well, he confirmed that no criminal charges were laid. He did not make any other submissions that were relevant to this type of Application.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlords to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenant, or a person permitted on the residential property by the

Tenant, has done any of the following:

- *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 interests 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;*
- *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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, as noted above, I am not satisfied that the Tenant ever ended his tenancy in accordance with the *Act*. In addition, it is clearly evident that the Tenant permitted at least one person, C.V., to reside in the rental unit. As such, even if the Tenant did vacate the rental unit at some point in time, as there is no evidence before me that a new tenancy was ever created, I find that the Tenant is still responsible for the people that he permitted to live in the rental unit under his tenancy.

Given this, I have M.L.'s direct, solemnly affirmed, testimony that an occupant of the Tenant's punched him in face on February 22, 2023. On the other hand, I have the Tenant's hearsay testimony about what he heard of what happened that day. In

addition, the Tenant never specifically refuted that this person punched M.L.

In weighing the evidence before me, I give more weight to M.L.'s direct, solemnly affirmed testimony of what had specifically happened to him on that day, versus the Tenant's hearsay testimony. As such, I am satisfied on a balance of probabilities that an occupant of the Tenant engaged in a pattern of behaviour that was intentional, inappropriate, hostile, and malicious, and would fall into the categories of: significantly interfering with or unreasonably disturbing another occupant or the Landlords, seriously jeopardizing the health or safety or a lawful right or interest of the Landlords, engaging 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, and engaging in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlords. I do not find that this behaviour is in any way reasonable, appropriate, or acceptable.

The Landlords must also demonstrate that "it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 for cause" to take effect.

When assessing and weighing the totality of the evidence before me, I find that the Tenant has allowed at least one occupant into the rental unit, and that one of the occupants engaged in such an abhorrent manner that should the tenancy continue, it is uncertain how much more dangerous the situation could become. As such, I find that the troublesome behaviour and action of this occupant was likely intentional, malicious, and that it poses an unpredictable danger that would likely cause a genuine concern for the ongoing safety of the property and of any persons that may attend the property.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlords to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlords have provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlords are entitled to an Order of Possession.

As the Landlords were successful in this claim, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain this amount from the security deposit in satisfaction of that claim.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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.

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 24, 2023

Residential Tenancy Branch