



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the Landlord's application under section 56 of the *Residential Tenancy Act* (the "Act") for an order for early end to the tenancy and an Order of Possession of the rental unit.

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.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:37 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

I informed the Landlord that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Amendment of Landlord

This application initially listed the landlord and applicant as Anderton Trailer Park. The Landlord confirmed that Anderton Trailer Park is the name of the park, not a legal entity. The Landlord confirmed that he owns the park jointly with his spouse. The Landlord confirmed that he owns the rental unit, a trailer. I find the Landlord is also named on the tenancy agreement as the landlord.

Under these circumstances, I find it can be reasonably anticipated by the Tenant for the landlord on this application to be changed from Anton Trailer Park to the Landlord.

Rule 4.2 of the Rules of Procedure states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Pursuant to Rule 4.2 of the Rules of Procedure and section 64(3)(c) of the Act, I amended this application to name the Landlord instead of Anderton Trailer Park.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord confirmed that the notice of dispute resolution proceeding package and the Landlord's initial evidence (collectively, the "NDRP Package") were given to the Tenant in person on March 2, 2023. The Landlord submitted a signed Proof of Service form in support. Based on the foregoing, I find the Tenant was sufficiently served with the NDRP Package pursuant to section 71(2) of the Act, Rule 10.3 of the Rules of Procedure, and paragraph 3(a) of the director's standing order dated March 1, 2021.

The Landlord stated that additional documentary evidence was served on the Tenant by attaching to the door on March 8, 2023. The Landlord submitted a signed Proof of Service form in support. These additional documents include pictures of the rental unit taken on March 7, 2023 during an inspection by the Landlord. I find the pictures of the rental unit to be new and relevant evidence under Rule 3.17 of the Rules of Procedure. I find the Tenant was sufficiently served with such evidence pursuant to section 71(2) of the Act. I do not consider the remainder of the Landlord's additional documentary evidence as I find they were not served within one day of the NDRP Package being made available as required under Rule 10.3 of the Rules of Procedure. Furthermore, the Landlord indicated that he had more evidence all along but was advised to submit more evidence. Therefore, I am unable to conclude that such evidence would have been new and relevant evidence under Rule 3.17 of the Rules of Procedure.

Having found the Tenant to be duly served with notice of this hearing, I directed that this hearing continue in the absence of the Tenant.

Issue to be Decided

Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on March 1, 2018 and is currently month-to-month. Rent is \$992.00 due on the first day of each month. The Tenant paid a security deposit of \$471.80.

The Landlord stated that the septic tank for the rental unit overflowed due to someone putting too much water down which broke the breakers. The landlord stated he believes the septic tank was damaged by JW, an occupant who resides with the Tenant. The Landlord stated that the problem was discovered at the end of January 2023. According to the Landlord, the health department attended and found they could not access the septic tank because the Tenant had fenced it off and installed a locked gate. The Landlord stated that on February 15, 2023, police attended at the property and broke the gate. The Landlord stated that they found the septic tank completely covered with the Tenant's junk such that the septic tank cannot be accessed. The Landlord stated that the top of the septic tank is supposed to be clear. The Landlord stated that the septic tank needs to be serviced but he is unable to do so due to the Tenant's junk. The Landlord stated that he has talked to the Tenant continuously but the Tenant has refused to take any action.

The Landlord submitted a copy of an order from the local health authority dated February 24, 2023 (the "Order") into evidence. In this Order, a health officer, ED, noted that during an initial inspection on February 8, 2023, effluent appeared to originate from behind a locked gate at the back of the rental unit and was being discharged onto the surface of the property between the rental unit and a neighbouring unit. The Order states that a sample was collected and the results indicate bacteria levels consistent

with that of raw sewage. ED confirmed that during a further site visit on February 15, 2023 with the Landlord and police, she observed a “structure” that was built “around the backyard of the trailer, enclosing the septic tank and distribution box, and thereby preventing the owner access to the system for regular maintenance.” The health officer further observed that the “tank and distribution box were covered with a large amount of the tenants miscellaneous items, impacting the integrity of the system.” Based on these findings, ED issued various orders against the Landlord, including to immediately cease and desist the discharge of sewage onto the ground surface and to immediately clear the area around the septic tank and distribution box.

The Landlord submitted pictures of the rental unit which show the fence enclosing the septic tank area, the locked gate, as well as the Tenant’s personal belongings and garbage blocking the septic tank area.

Analysis

In this case, the Landlord bears the onus of proving that this tenancy should be ended early and an Order of Possession be granted.

Section 56 of the Act states as follows:

Application for order ending tenancy early

56(1) A landlord may make an application for dispute resolution requesting

- (a) an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord’s notice: cause*], and
- (b) an order granting the landlord possession of the rental unit.

(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.
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Based on the Landlord's undisputed testimony and evidence, I am satisfied on a balance of probabilities that an early end to the tenancy is warranted in the circumstances. I accept the Landlord's evidence that the Tenant has blocked off access to the septic tank and has covered it with the Tenant's personal belongings. Based on the Order, I find the septic tank is discharging effluent onto the surface of the property, including the space between the rental unit and another unit in the park. I accept the Landlord's testimony that the Tenant has refused to take any action to clear the area around the septic tank or provide the Landlord with access to service the septic tank. I find the Tenant has seriously jeopardized the health of other occupants of the residential property. I also find the Tenant has put the Landlord's property at significant risk of damage. I find the Landlord has met the onus of proving cause for ending the tenancy early under sections 56(2)(a)(ii) and 56(2)(a)(iii) of the Act.

Moreover, I find the Landlord has established that it would be unreasonable and unfair to wait for a one month notice to end tenancy for cause. I am satisfied that there is an urgent need for the Tenant's belongings to be cleared out and for the septic tank to be repaired. I find the overflow from the septic tank poses ongoing and significant health risks to other residents in the park and risk of damage to the Landlord's property. I accept the Landlord was issued with the Order requiring immediate and ongoing compliance. Therefore, I conclude that it would be unreasonable and unfair for the Landlord and other occupants to wait for a one month notice to take effect.

Having found the requirements in sections 56(2)(a)(ii), 56(2)(a)(iii), and 56(2)(b) of the Act to be met in the circumstances, I conclude that this tenancy should be ended early.

Conclusion

The Landlord has met the burden of proving that the tenancy should end early.

Pursuant to section 56(2) of the Act, I order that this tenancy is ended March 23, 2023, the date of this decision.

Pursuant to section 56(2), I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: March 23, 2023

Residential Tenancy Branch