



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened in response to an application by the Landlord for an early end of tenancy and an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”) and for recovery of the filing fee.

The Landlords and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Witness provided evidence under oath.

Preliminary Matter

At the onset of the tenancy the Tenants requested an adjournment in order to have a witness attend the hearing. The Tenants state that this witness could not be contacted prior to the hearing as the witness was out of reach by cell phone or other communication but would return on June 24 2013 after which the witness would be available. The Tenants confirmed that this witness had not yet been contacted or asked to attend a hearing as a witness. The Tenants stated that this witness is a personal friend who has been at the unit numerous times and can give evidence about not seeing any grow-op. The Tenant further asked for an adjournment in order to hire a house inspector to inspect the unit for evidence of a grow operation and to enable the Tenants an opportunity to provide better evidence to rebut the Landlord’s evidence. The Tenant confirmed that no inspector has been contacted yet.

The Landlord stated that they do not want an adjournment as they are concerned that they are currently without insurance given the existence of a grow-op and further that this witness is a previous landlord of the Tenants and was not present when the incident giving rise to this dispute occurred.

Given that the Tenants have provided no evidence that their proposed witness will even attend an adjourned hearing to give evidence, accepting that this witness was not present at the time of the incident, considering that the Tenants have taken no steps to obtain an inspector and considering the Landlord's concerns in relation to the security of the unit, I found that an adjournment was not warranted and I denied this request.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 15, 2013. Rent of \$1,785.00 is payable monthly. At the outset of the tenancy the Landlord collected \$892.50 as a security deposit.

The Landlord states that on June 5, 2013 the Landlord attended the unit to carry out an inspection. The Landlord states that upon entering the garage of the unit, an amount of articles were found stored in the middle of the garage covered with a tarp. The Landlord states that the Tenant told the Landlord to be careful not to touch this tarp or the articles underneath. The Landlord states that upon inspecting the basement, the floor was found to have water marks and the basement had a musty smell. The Landlord states that before this current tenancy the Landlord had lived in the unit except for the year previous to the current tenancy when another tenant was in the unit. The Landlord states that at no time before this tenancy was there any dampness or musty smell in the basement. On this same occasion, the Landlord had brought a pest control person, the Witness, to carry out pest control around the exterior of the house while the Landlords were carrying out the inspection.

The Landlord states that while his wife remained in the unit with the Tenants the Landlord went outside and spoke with the Witness who informed the Landlord that there was a strange smell coming from the shed by the house. The Landlord states that shed was locked and with the help of the Witness the shed door was pried slightly open and marihuana plants were seen in the shed. The Landlord states that he then took photos of the interior of the shed. The Landlord and provided these photos as evidence along with photos of several large plant containers sitting near the shed.

The Landlord states that the Tenant had earlier informed the Landlord that the shed contained a lawn mower and trimmer and that the Tenant has lost or misplaced the keys to the shed lock. The Landlord states that the Tenants also had issues with the number of times the Landlord attended the unit to carry out inspections or repairs. It is noted that the tenancy agreement provides for monthly inspections.

The Witness states that while spraying around the unit, he thought he smelled a skunk and that the smell was coming from the shed. The Witness states that when he looked into the shed with the Landlord he saw the top of a few plants and noticed the skunk smell was much stronger.

The Landlord states that he reported the matter to the police and returned the next day to serve the Tenants with this application. The Landlord states that he informed the Tenants that marihuana plants had been seen and that the Tenant looked surprised. The Landlord states that he again went to the shed which was still locked and the heavy smell was still present. The Landlord states that this time both his sister and a neighbour looked inside the shed and saw the plants. The Landlord states that he never asked the Tenants about the large plant pots as he immediately made the connection with the plants in the shed. The Landlord states that he believes the plants were previously being grown in the basement and had been stored in the shed due to the inspection that was to take place.

The Landlord states that it would be unfair to wait for a one month notice to take effect as the police have been notified and as a result their fire insurance on the unit is currently void and because they are concerned about the application of the civil forfeiture act if they allow the tenancy to continue or accept rent.

The Tenants deny growing marihuana plants and state that while they do not deny the photos containing the plants are of the interior of the shed they believe that the photos are inconclusive that they are photos of the shed or of marihuana plants. The Tenants state that they do not know where and when these photos were taken. The Tenants state that they kept a few basil and tomato plants in the shed and are not sure what the plants in the photo are as the photos are blurry. The Tenants state that a gas lawn mower is also stored in the shed, that there is no power source or light in the shed and no structural modifications were done to the shed.

The Tenant states that the large plant pots were obtained free on craigslist, that the Tenants intended sell the containers and that they were being stored until such a sale. The Tenant states that the articles under that tarp in the garage were books and other odds and ends that the Tenant did not want the Landlord to touch.

The Tenants state that they never noticed any musty smell in the unit, that the moisture on the basement floor is "efflorescence, likely due to cracks in the foundation" and that any musty smell in the basement is not uncommon in older houses and particularly in the lower mainland. The Tenants question why the Landlord made no comment about the basement floor if they noticed it was wet.

The Tenants submit that although the tenancy agreement provided for a monthly inspection, the Landlord had assured them at signing that the inspections would not occur that often. The Tenants state that the issue of their privacy arose with the Landlord when they expressed concern with the frequent number of the times that the Landlord had been at the unit to date. The Tenants state that they have not been

contacted by police. The Tenants provided photos of the shed that they state were taken June 6, 2013 after being served with the application for dispute resolution.

Analysis

Section 56 of the Act provides that a landlord may make an application to end a tenancy earlier than it would end if the landlord issued a 1 Month Notice to End Tenancy for Cause and obtain an Order of Possession in certain circumstances. It is not necessary for the landlord to issue a 1 Month Notice; however, the landlord must show that:

- (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.

Although the photos are somewhat blurry, given the distinctive, visible and commonly identifiable shape of the foliage of the plants in the photos and accepting the Landlord and Witness evidence of the distinct odor emanating from the shed, I find on a balance of probabilities that these are photos of marijuana plants. Given the Witness evidence of seeing those plants while the Landlord was present, I accept the evidence of the Landlord that the photos were taken of the inside of the shed during the inspection of the unit on June 5, 2013. Given that the Tenants' photos were taken after being informed by the Landlord that marijuana plants were found in the shed, I find that this evidence offers little to no value in determining whether marijuana plants were in the shed on June 5 or 6, 2013 and prior to the Landlord's delivery of the application. I

therefore find that the Landlord has substantiated on a balance of probabilities that the Tenants have engaged in an illegal activity.

I note that the Tenant's evidence of the type of articles stored under the tarp in the garage does not seem reasonable in relation to their concerns that the Landlord not see or touch these items. The undisputed evidence of moisture on the basement floor and the presence of marihuana plants and pots tend to support a belief that the hidden items are related to the previous growth of the plants in the basement. Accordingly, and given the finding of illegal activity by the Tenants and the Landlord's insurance evidence and forfeiture concerns, I find that the Tenants have jeopardized or are likely to jeopardize the interests of the Landlord and that time is of the essence in ending the tenancy. I therefore find that the Landlord is entitled to an order of possession.

As the Landlord has been successful with its application, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee and I order the Landlord to deduct this from the security deposit.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order the Landlord to retain \$50.00 from the security deposit in full satisfaction of the claim.

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: June 21, 2013