



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIZE ATELIER (WLY) LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for an order to end the tenancy early due to urgent health or safety reasons under section 56 of the Act, and receive an order of possession, and to recover the cost of the filing fee.

An agent for the landlord MK (agent) attended the hearing and gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained and an opportunity to ask questions was provided to the agent.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated May 28, 2020 (Notice of Hearing), the application and documentary/digital evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the tenant by email and registered mail on May 28, 2020, with an additional email on June 3, 2020. The registered mail tracking number has been included on the style of cause for ease of reference. According to the Canada Post online registered mail tracking website information, the registered mail package was delivered on May 29, 2020. Based on the undisputed testimony and the registered mail tracking information, all of which I find support the agent's testimony, I find the tenant was sufficiently served under the Act as of May 29, 2020, the day in which the registered mail tracking information indicates it was delivered.

As the tenant was served and did not attend the hearing, I consider this matter to be unopposed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The agent confirmed the email address for both parties at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The decision will be emailed to the tenant.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession pursuant to section 56 of the Act for urgent health and safety reasons?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The landlord provided a copy of the tenancy agreement. The tenancy began on April 1, 2020. The agent stated that the tenant continues to occupy the rental unit.

The agent testified that the tenant has seriously jeopardized the health or safety or lawful right or interest of the landlord and other occupants by putting out many cigarettes in their carpet and has crawled on the floor of the elevator, hallways and lobby area spreading urine and feces and creating a horrible smell in the rental building and a health hazard during the current COVID-19 pandemic. The agent stated that they are concerned that the tenant will start a fire in the rental building and that the rental unit is a non-smoking unit, yet the photo evidence presented shows many cigarettes that appear to have been put out in the carpet causing damage.

The agent also stated that on May 21, 2020, they called the police to do a welfare check on the tenant and when the police entered the rental unit, they police and the agent were overwhelmed at the intense odour of urine and feces. According to the agent, the RCMP constable advised the agent that the staining on the carpet was from urine and feces. The agent also stated that the tenant was storing urine in vodka bottles and photos were submitted and reviewed, which support all of the testimony.

In addition, several videos were reviewed during the hearing which show the tenant unable to walk due to what the agent describes is over intoxication from alcohol. The videos show the tenant falling over onto a plant and damaged the plant, crawling on the lobby floor, eating pizza from the floor, and staggering while accepting a liquor delivery according to the agent.

Analysis

Based on the undisputed documentary and digital evidence, and the undisputed testimony provided during the hearing, and on a balance of probabilities, I am satisfied that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 56 of the Act applies and states:

Application for order ending tenancy early

56(1) A landlord may make an application for dispute resolution to request an order

- (a) 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) granting the landlord an order of possession in respect 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.

[Emphasis added]

I am also satisfied that it would be unreasonable and unfair to the landlord and other tenants in the rental building to wait for a notice to end tenancy under section 47 of the Act. I find the actions of the tenant to be unreasonable as I find there is no room in any tenancy for smearing urine and feces in the rental building, especially during the current COVID-19 pandemic. Furthermore, I find the act of extinguishing cigarettes on the carpet of the rental unit is negligent and is likely to cause a fire in the rental building which threatens the safety of all occupants. Therefore, pursuant to section 56 of the Act, I grant the landlord an order of possession for the rental unit effective not later than **two (2) days** after on the tenant. I find the tenancy ended the date of this hearing, June 16, 2020 pursuant to section 62(3) of the Act.

As the landlord's application is successful, I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$100.00** for the recovery of the cost the filing fee under section 72 of the Act. I authorize the landlord to deduct \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee as a result pursuant to sections 38, 62(3) and 67 of the Act.

Conclusion

The landlord's application is successful.

The tenancy ended this date, June 16, 2020. The landlord is granted an order of possession effective two (2) days after service on the tenant. This order of possession granted pursuant to section 56 of the Act can be enforced under *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020 and later extended several times including most recently on June 10, 2020.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord for service on the tenant. This order may be enforced through 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 *Act*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: June 16, 2020

Residential Tenancy Branch