



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an early end to the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 10:05 am in order to enable the tenants to call into the hearing scheduled to start at 9:30 am. The landlord was represented by two agents ("**AM**" and "**KH**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that AM, KH, and I were the only ones who had called into the hearing.

KH testified that the landlord served tenant DL with the notice of dispute resolution package and supporting documentary evidence by posting these documents on the door of the rental unit on July 27, 2022. She testified that the landlord served tenant PL by sending these documents to him on July 28, 2022 via registered mail. She provided a tracking number, which is reproduced on the cover of this decision. The landlord submitted proof of service forms confirming KH's testimony.

I find that the tenants have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord's agents, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The rental unit is an apartment in a luxury apartment building (the "**building**"). The landlord is an agent of the owner of the rental unit. The building itself is governed by a strata corporation who has delegated the day-to-day management of the building to a property management company.

The parties entered into a written, fixed-term tenancy agreement starting April 25, 2022 and ending April 30, 2023. Monthly rent is \$2,500 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$1,250, which the landlord continues to hold in trust for the tenants. In addition to signing the tenancy agreement, the parties signed a five-page addendum and a "Form K" document required by the *Strata Property Act*.

Tenant PL is the father of tenant DL. PL does not reside in the rental unit, but pays the rent on PL's behalf. Hereinafter I will refer to tenant DL as the "tenant".

AM testified that the tenant has engaged in multiple forms of conduct which warrant her eviction on an emergency basis. He testified that the tenant scratched her phone number into the glass of the entrance door in the lobby of the building. He submitted photographs taken by the building's security system of the tenant doing this. The property management company advised KH that the window had to be replaced as a result, and the owner of the rental unit would be billed for the replacement cost.

KH testified that he spoken to the tenant about this, and that she admitted to doing it. He testified that she told him that she believed the strata and the property management company were not treating the other residents of the building appropriately, and that she wanted to provide her contact information to them, so she could help.

KH testified that the tenant invites homeless people into the building. He testified that she would let groups of them into the building and then invite them to stay in her apartment. He testified that the property management company has not provided any evidence that these people have damaged the building, but they provided him with photos of people sprawled out on the outside stairs of the building obstructing the entrance. He testified that the building was not in an area usually frequented by homeless people, and he believed the tenant was drawing them to the area.

KH testified that a vehicle in the building's parkade was broken into, and that the property management company had linked the break into someone with the tenant's key fob. The property management company has since deactivated this fob.

KH testified that the property management company has received complaints from other occupants of the building about the tenants conduct these include:

- spilling a drink in the elevator which stained the carpet.
- placing a luggage cart in front of the building is entrance, which impeded other occupants; and
- smoking in the rental unit.

KH testified that on August 5, 2022, a fire alarm was triggered in do too smoking in the building's pool's changing room. The fire department had to attend the building to address this alarm. KH testified that the property management company determined that the tenant and a guest of hers or seen going into the changing room and then leaving it rate as the alarm went off. He testified that the property management company has deactivated the tenant's remaining fob for all of the building except the front entrance and elevator.

Analysis

Section 56 of the Act sets out how a landlord may end a tenancy early. It states:

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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord must prove that it is more likely than not that the tenant acted in one of the ways described in section 56(1)(a) of the Act and that it would be unreasonable or unfair for the landlord to have to wait to end the tenancy for cause pursuant to section 47 of the Act.

For the reasons that follow, I find that the landlord satisfied its evidentiary burden to prove both of these, and that the tenancy should be ended.

I accept KH's testimony, supported by photographs and correspondence from the property management company, in its entirety as to the conduct of the tenant.

In particular, I find that the tenant wrote her phone number on the lobby window of the building, and that this damaged the window necessitating replacement.

Merriam-Webster's Dictionary defines "extraordinary" as:

going beyond what is usual, regular, or customary

The damage, and the tenant's reason for causing it, is beyond usual, regular, or customary damage that occurs in the course of a tenancy. It amounts to deliberate vandalism of a common area of the building without justification. I find that this meets with the requirement set out at section 56(2)(a)(v) of the Act.

Such misconduct is not an isolated incident. Based on the written complaint submitted into evidence, I find that the tenant has smoked in the rental unit on at least one occasion, which disturbed her neighbours and that she caused minor damage to the carpet in the building's elevator.

I am not satisfied that the Act of inviting homeless people into the building, and their subsequent lounging on the exterior steps of the building amount to conduct which would warrant an early end to the tenancy.

However, the landlord only needs to satisfy one of the grounds set out at section 56(1)(a) of the Act. The landlord has done this.

As the act of damaging the building's window was not an isolated incident and as all of the breaches alleged had an effect on one or more tenants in the building (damage to the building's common property or disturbance of neighbours), I find it would be unfair to the landlord and to the other residents of the building to require that the tenancy be ended pursuant to section 47 of the Act.

Accordingly, I order grant the landlord an order of possession effective two days after it served the tenant with a copy of it.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenant. Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of this amount. The landlord must handle the balance of the security deposit in accordance with section 38 of the Act.

Conclusion

Pursuant to section 56 of the Act, I order that the tenant's deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

The landlord may retain \$100 of the security deposit as reimbursement of its 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: August 25, 2022

Residential Tenancy Branch