



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord and tenants JA and JT (the tenant) attended the hearing. The landlord was represented by agent MM. Witnesses for the landlord KB and BS also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Service

The tenants confirmed receipt of the notice of hearing and the evidence in person on September 17, 2022.

The landlord received two fire department inspection reports dated September 20 and 27, 2022 (the new evidence) on September 27, 2022 and served them in person to the tenants on September 28, 2022 at 1:45 P.M.

The tenants confirmed receipt of the new evidence. The tenants affirmed they did not have enough time to review the new evidence. Later the tenants stated they had enough time to review the new evidence, but they did not agree with it.

Rule of Procedure 3.17 states:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].

Based on the testimonies offered by both parties, I find the landlord served the notice of hearing and the evidence in accordance with section 89(2)(a) of the Act.

The notice of hearing is dated September 16, 2022 and the new evidence was available to the landlord on September 27, 2022. Considering that the tenants had enough time to review the new evidence, I find it is not necessary to adjourn this hearing. I accepted the new evidence, as it was not available when the landlord served the materials and I find it is relevant.

Prior application

The landlord previously applied for an order for the early termination of the tenancy and the parties attended a hearing at the Residential Tenancy Branch (RTB) on August 09, 2022 at 9:30 A.M. The file number is referenced on the cover page of this decision.

The prior decision is dated August 17, 2022. It states:

MM stated that the Landlord is requesting an early end to the tenancy as the Tenants and their guests have been disturbing and endangering other tenants and staff.

MM explained that BC Housing took over the rental property in May 2021, and the parties entered into a new tenancy agreement with lower rent in September 2021. MM testified that there have been complaints about the Tenants and their guests since June 2021, as follows:

- June 13 and 14, 2021 – Tenants' guest with dog barking at 3:00 am; guest swearing at and threatening other tenants
- June 16, 2021 – Tenants' probation officer contacted due to "verbal assault"
- June 17, 2021 – Tenants and 6-10 guests throwing items at another tenant's door
- July 22, 2021 – Tenants' guests climbed over fence and yelling at dog; 10 people at 3:00 am being loud, and swearing when told keep it down
- August 6, 2021 – Tenants' guest swore at complainant neighbour; 8-10 guests outside barking at a dog, causing the dog to bark more
- September 1, 2021 – non-resident shot off a 22 handgun outside the rental unit
- April 11, 2022 – Tenants' guests throwing garbage, stripping wires, and working on bikes; neighbour complained about noise and doesn't feel comfortable with guests there
- April 19, 2022 – neighbour requests transfer due to Tenants and their guests; neighbour states they have been "harassed, yelled at, threatened, things thrown at my unit door, and pushed", does not feel safe to leave own unit
- July 26, 2022 – Tenant throws items at another tenant's property

The landlord submitted the current application on August 31, 2022.

I explained to the landlord that I will not consider in this application the facts discussed in the August 09, 2022 hearing, as these facts were already heard.

Issues to be Decided

Is the landlord entitled to:

1. An order of possession?
2. An authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord testified the tenancy started on September 15, 2021 and that monthly rent is \$725.00, due on the first day of the month. The tenant said the tenancy started in April 2020. Both parties agreed the landlord did not collect a security or a pet damage deposit. The tenancy agreement was submitted into evidence.

The landlord affirmed there is a huge fire risk in the rental unit because the tenants store an excessive quantity of combustible materials in and around the rental unit.

The landlord believes the prior property manager may have warned the tenants in December 2021 about hoarding. The landlord first asked the tenants to remove the excessive materials in April 2022. The April 08, 2022 letter states: “[...] These inspections will take place every Tuesday at 1:30 P.M. starting on April 12, 2022. The reason for the inspections is due to the safety and fire hazard of the rental unit and adjacent units because of the immense clutter inside and out.”

The landlord submitted several inspection reports signed by the tenant:

- April 12, 2022: “outside debris must be cleaned”
- April 26, 2022: “bin cannot close. Outdoor area: many items. Inside: last week to clear 80%, after [not legible] removal will come”
- May 10, 2022: “junk company to remove remainder outside. Bedroom: keep going on progress”
- May 24, 2022: “insure – poor”
- May 30, 2022: “lego -gone by next week”
- On June 02, 2022: “bikes, parts/debris”

The landlord submitted photographs dated May 3, July 5, August 2 and 16, 2022 showing an excessive quantity of materials stored around and inside the rental unit and photos dated August 09, 2022 named “Fire Department”. The materials stored include clothing, bins, bicycles, mattresses, suitcases and tents.

The landlord submitted letters dated July 7 and 14 and August 5, 2022 asking the tenants to remove items from the rental unit.

The fire department inspection report dated July 26, 2022 indicates that on that date the rental unit had “unsatisfactory hoarding” conditions:

I was invited into [rental unit] and took photographs and compared it to the hoarding scale. This is deemed excessive hoarding and a fire hazard. I am going to give the

tenants 14 days to achieve the following listed below if this is not achieved in 14 days a letter will be written to BC housing stating [rental unit] hoarding is a imitate fie risk to the building and all occupants. The following must be completed in 14 days: Minimum of 42' of clear width to bathroom, bedroom and exits. Counter tops must be visible Appliances (stove) must be visible (no storage on top of the stove) 1' clearance around all baseboards All outlets must be visible Using the clutter image scale we need to achieve a level 4 or less.

The fire department letter dated August 9, 2022 states:

A routine fire inspection was conducted April 26, 2022; an order to remove combustible accumulations in and around [rental unit] was issued. A follow up inspection occurred July 26, 2022, no reduction in the amount of combustible waste was observed. An order was given at this time to the occupants [tenants] stating that they had 14 days to significantly reduce the amount of combustible waste in and around [rental unit]. A site visit was conducted August 03, 2022, at this time a verbal reminder was given to [tenants] stating that a final fire inspection would be conducted August 9, 2022. A final fire inspection was conducted today, August 9, 2022 @ 13:00. Excessive accumulation of combustible waste was still present inside and outside of [rental unit]. The ongoing hoarding issue inside [rental unit] poses an eminent fire risk to unit [redacted for privacy] with the potential of igniting adjacent buildings on this property.

The fire department inspection report dated September 20, 2022 states: "Unsatisfactory condition: I have asked the tenants to have half of the materials outside removed within 7 days." On September 27, 2022 the fire department inspected again the unit:

Combustible material. Unsatisfactory condition: No observable reduction in the amount of combustible material around and close to units [rental unit] Egress is obstructed from [rental unit]. The amount of combustible storage inside the unit has increased from last week. 6/9. These conditions pose an imanant [SIC] fire risk to this unit and adjacent units.

The tenants stated they were first warned by the landlord about excessive materials stored in and around the rental unit in April 2022. The tenants testified they cleaned the rental unit and that currently the rental unit does not have excessive materials. The tenants inquired why the landlord waited so long to apply for an order for the early termination of the tenancy.

The landlord submitted this application on August 31 because of a report dated August 27, 2022 and because the tenants are accumulating more materials. The landlord said

that before submitting an application to end the tenancy the landlord tried to help the tenants and if she served a one month notice to end tenancy for cause it would be unreasonable to wait a long time to obtain an order of possession due to the fire risk.

Witness KB affirmed he is a fire inspector and inspected the rental unit on six occasions, including August 9, September 20 and 27, 2022. KB stated that between August 9 and September 20, 2022, there was a significant increase in the quantity of materials and this posed a significant fire risk. KB testified that between September 20 and 27 there was no noticeable reduction in the quantity of materials around the rental unit and the quantity of materials inside the rental unit increased. KM said that it is risky to wait 30 more days for the tenants to move out because of the fire risk.

The tenants affirmed that they could not walk to the bathroom or see the refrigerator and now they can, as they reduced the quantity of materials since August 2022.

Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

- (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.

Residential Tenancy Branch Policy Guideline 51 states:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the photographs, letters, inspection reports and testimony offered by the landlord and the tenants, I find that the tenants store an excessive quantity of materials in and around the rental unit and that the landlord first asked the tenants to remove the materials in April 2022.

I find the testimony offered by fire inspector and witness KB about the significant increase in the quantity of materials in the rental unit between August 9, 2022 at 1:00 PM (after the prior application hearing) and September 27, 2022 was more convincing and straightforward than the testimony offered by the tenants. The tenants' testimony "they could not walk to the bathroom or see the refrigerator and now they can, as they reduced the quantity of materials since August 2022" does not indicate that their rental unit does not have an imminent fire risk.

Based on the fire department letters dated August 9, September 20 and 27, 2022 and the more convincing testimony offered by witness KB, I find, on a balance of probabilities, upon further and careful reflection, pursuant to section 56(2)(a)(ii) and (iii) of the Act, that the tenants seriously jeopardized the safety of other occupants of the rental property and put the landlord's property at significant risk by continuing to have an excessive quantity of combustible material in and around the rental unit, as this is a fire risk.

Additionally, I find that the worsening situation regarding the materials in the rental unit noticed between August 9, at 1:00 PM and September 27, 2022 increases the fire risk. The landlord obtained the August 9, 2022 fire department letter, on August 17 the prior decision was issued and the landlord timely submitted this application on August 31, 2022.

If the landlord issued a notice for cause under section 47 of the Act, the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenants. I find, on a balance of probabilities, upon further and careful reflection, that pursuant to section 56(2)(b), it would be unreasonable for the landlord to wait to end the tenancy by issuing a notice for cause due to the fire risk caused by the tenants.

I grant an order of possession effective two days after service on the tenants, pursuant to section 56(2) of the Act.

As the landlord is successful in this application, the landlord is entitled to recover the filing fee.

Conclusion

Pursuant to section 56(2) of the Act, I grant an order of possession to the landlord effective **two days after service of this order**. The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants fail to comply with this order, this order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72(1), I grant a monetary order in the amount of \$100.00 to the landlord. The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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: October 06, 2022

Residential Tenancy Branch