



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1304615 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the *Residential Tenancy Act* (the Act), seeking an order ending the tenancy early and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by an agent for the Landlord G.C. (the Agent) and the Tenant, both of whom provided affirmed testimony. As the Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) package, which includes the Application and the Notice of Hearing (NOH), as well as the documentary evidence before me on behalf of the Landlord, the hearing therefore proceeded, and I accepted the Landlord's documentary evidence for consideration. No documentary evidence was submitted by the Tenant for my consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to

the relevant and determinative facts, evidence, and issues in this decision. At the request of the Agent a copy of the decision and any orders issued in favor of the Landlord will be e-mailed to the Agent at the e-mail address provided in the online application system. At the request of the Tenant, a copy of the decision will be mailed to them at the rental unit.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 56 of the Act?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The Agent stated that the Landlord has cause under section 56 of the Act to end the tenancy early because there have been assaults at the rental unit on multiple occasions, the RCMP have had to be called to the rental unit on multiple occasions, furniture has been smashed on the lawn, there has been drug use at the rental unit, and either the Tenant and/or persons permitted onto the rental property by the Tenant lit fires between the rental property and a neighbouring property on fire with fireworks/firecrackers and/or a cigarette, causing significant property damage.

The Agent pointed to two affidavits in the documentary evidence before me from neighbours, specifically a section of A.H.'s affidavit where A.H. states that they witnessed the Tenant discharging fireworks, resulting in a large fire, and heard them utter "what the (expletive) did we do?".

A sworn affidavit was submitted by a witness A.H. who states in the affidavit that they are a resident of the neighboring property and that they have witnessed the occupants of the rental unit and/or persons permitted onto the rental property by the occupants of the rental unit engaging in:

- Physical fights and the destruction of property;
- What appears to be illegal activity, specifically the stripping of large amounts of copper wire and the spray painting of bicycles in the middle of the night;
- Disruptive behaviour such as the yelling of profanity at neighbours, resulting in police attendance; and

- The use of fireworks or something similar, which caused a large fire which put the rental property and numerous neighbouring properties at risk and necessitated the attendance of the fire department.

In their affidavit A.H. also stated that they strongly believe the occupants/tenants of the rental unit are a danger to others.

A sworn affidavit was submitted by a witness J.D. who states in the affidavit that they are a resident of a neighboring property and that a female used their phone to call the police after they were assaulted by a male at the rental unit and that they have witnessed the following:

- A male kick a female so hard that they were knocked off their feet; and
- RCMP attendance at the property on numerous occasions.

In their affidavit J.D. also stated that they were told by the municipal fire investigation team that a firecracker and a cigarette from the occupants of the rental unit caused a fire, and that they believe the occupants are a danger to others, the rental unit, and neighbouring properties.

Pictures of the fire, a firecracker/firework casing, and photos of the damage caused to the rental property and an adjacent property were submitted for my review and consideration, along with numerous videos of the fire.

The Tenant stated that they do not know anything about the allegations against them from the Landlord, that they live with their 83-year-old father, and that they were cooking dinner for their father at the time of the fire, and only ran out to help when they saw it.

The Tenant also called into question the reliability of the affidavits stating that J.D. was not even home at the time of the fire, and there are things crossed-out and written into the type documents by hand, which they find concerning/questionable.

Analysis

Section 56(2) of the Act states the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession if satisfied 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 Tenant called into question the reliability of the affidavits, I am satisfied that they were completed and witnessed by a commissioner for oaths (commissioner) in British Columbia, specifically a Notary Public with the initials E.J.K., based on the seal, signature, and stamp located on the affidavits, and that all corrections made in handwriting to the typed documents were properly initialled by both the affiant and the commissioner. In one case a correction was to the spelling of A.H.'s surname, and in the other there was a correction to the month in which the affidavit was sworn/affirmed, and a change from the word "backward" to "forward". Given the nature of the changes made, and the fact that I am satisfied that all three changes were properly initialled and made in the presence of the commissioner, I do not find these changes detract, in any meaningful way, from either the substance of the material covered by the affidavits or their overall credibility or reliability, despite the Tenant's assertions to the contrary.

While the Tenant denied the allegations against them, they submitted no documentary or other evidence in support of their testimony. In contrast, the Agent submitted two compelling sworn affidavits from witnesses to several incidents at the property which gave rise to the Landlord's Application, as well as numerous photographs and videos. As a result, I prefer the evidence and testimony before me from the Agent on behalf of the Landlord.

Based on the sworn affidavits before me, one of which indicates that they clearly saw two male occupants they recognized from the rental unit discharging fireworks that started a "very large fire", and the videos and the photographs before me, I am satisfied on a balance of probabilities that the Tenant or persons permitted on the rental property by the Tenant, has at the very least, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, put the landlord's property at significant risk, and caused extraordinary damage to the residential property by causing a fire on or adjacent to the rental property. I am also satisfied, given the severity of damage caused and the risk to life and property posed by the fire, that 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 to take effect.

Based on the above and pursuant to section 56 of the Act, the Landlord is entitled to an Order of possession effective two days after service of the order on the Tenant and I order the Tenant and all occupants to vacate the rental property in compliance with this order.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, and as per the Agent's request, I therefore authorize the Landlord to retain \$100.00 from the Tenant's security deposit in repayment of this amount. Any remaining balance must be dealt with in accordance with the Act.

Conclusion

Pursuant to section 56 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and 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 Act.

Dated: November 28, 2022

Residential Tenancy Branch