

Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

<u>Introduction</u>

This hearing originally convened on February 16, 2023 and was adjourned to February 22, 2023 due to time constraints. This Decision should be read in conjunction with the February 16, 2023 Interim Decision. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early termination of tenancy and Order of Possession, pursuant to section 56;
 and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

In the February 16, 2023 hearing the tenant and two agents for the landlord, agent J.K. (the "landlord") and agent A.H. (the "property manager"), attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called witness J.L. who provided affirmed testimony. The tenant was provided with an opportunity to cross examine witness J.L.

In the February 23, 2023 hearing the tenant and two agents for the landlord, agent J.K. (the "landlord") and agent A.H. (the "property manager"), attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called the property manager who provided affirmed testimony. The tenant was provided with an opportunity to cross examine the property manager.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

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."

Both parties confirmed their email addresses for service of this Decision

<u>Issues to be Decided</u>

- 1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
- 2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Only evidence that was presented in the hearing was considered in this Decision, pursuant to Rule 7.4 of the *Rules*.

While I have turned my mind to the presented documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The tenant's partner originally held the lease at the subject rental property and the tenant lived with her partner at the subject rental property for some time. The tenant took over the lease effective October 1, 2022 and her partner 'ex-partner "M.D." moved out. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenant to the landlord.

The landlord testified that the tenant placed the subject rental property at extreme risk and caused excessive damage at the subject rental property. The landlord testified that the tenant abandoned the subject rental property without heat and with the taps on full blast for approximately one month in December 2022. The landlord testified that the pipes froze because of the tenant's negligence and caused a major water leak when temperatures dropped, and the cracked pipes unthawed.

The landlord testified that the tenant did not inform him that she was leaving the house empty, that there were any problems with the pipes or that she left the taps on at the subject rental property while absent from the property. The landlord testified that he was informed of the water leak by another tenant (witness J.L.) who resides in a neighboring property also owned and rented out by the landlord.

Witness J.L. testified that he is the tenant's next-door neighbour and has resided next door for the past four years. Witness J.L. testified that five homes, including the subject rental property and his rental property, share a water system and that the homes are provided with water via an 8,000 gallon water tank. The water drains from the tank located on high ground above and flows down to the houses.

Witness J.L. testified that he believes that the tenant left the subject rental property on or around December 1, 2022 and did not attend at the subject rental property for the entire month of December 2022 as he did not see her during that time. On cross examination, witness J.L. testified that he could not see the subject rental property from his home.

Witness J.L. testified that on December 25th or 26th, 2022, his water stopped working. Witness J.L. testified that he thought this was due to an accumulation of sediment which would clear; however, by New Years he still did not have water and so he checked with some of his neighbours to see if they were also having problems. Witness J.L. testified that his neighbours also didn't have water pressure and so on January 3, 2023 he hiked to the water tank and found that it was empty, which he had never seen before.

Witness J.L. testified that he checked in which each of the homes on the water system. Witness J.L. testified that when he attended at the subject rental property on January 3rd, 2023, he saw water pouring out of the ceiling. Witness J.L. testified that when he entered the subject rental property, he saw that all the taps were left open and that water was pouring from the taps into the sinks and bath. Witness J.L. testified that he

turned off the water supply to the subject rental property which was easily accessed from the outside of the home. Witness J.L. testified that everything in the kitchen was soaked through. Witness J.L. testified that once the water at the subject rental property was turned off, it took a couple of days for the water tank to refill.

Witness J.L. testified that it is not normal to leave taps fully open in the winter when you leave a property for a substantial amount of time. Witness J.L. testified that if the temperature drops below -20 degrees Celsius it is normal to let water drip but that you have to also keep the heat on so that the pipes don't freeze. Witness J.L. testified that the heat was left off and that the tenant had left a portable heater on in the fan mode below the kitchen sink, pointing at the pipes. Witness J.L. testified that the fan mode did not produce any heat. A photograph of same was entered into evidence and shows a space heater plugged into an outlet next to the kitchen sink and placed in front of the kitchen cabinet below the sink. The cabinet doors are open, and the space heater is pointed at the plumbing under the kitchen sink. The setting the space heater is set to cannot be seen in the photograph. The landlord entered into evidence photographs and videos showing significant water damage to the kitchen.

Witness J.L. testified that he notified the landlord of the water issue and water damage described above on January 3, 2023. Witness J.L. testified that he has never had a problem with his pipes freezing but that it is hard to keep pipes from freezing without heat in the winter.

The landlord testified that when witness J.L. informed him of the water damage caused by the tenant, he tried to get a hold of the tenant, but she did not respond to his messages.

Witness J.L. testified that the landlord hired him to move the tenant's kitchen belongings to a dry room and to tear out the kitchen and drywall which were destroyed by the water damage. Before and after photographs were entered into evidence. Witness J.L. testified that he turned on the baseboard heaters and started a fire in the fireplace on the instruction of the landlord to dry out the subject rental property.

On cross-examination witness J.L. confirmed that in the summer of 2020 he did not have good water pressure and that the landlord was difficult to get a hold of to resolve the issue. Witness J.L. testified that there is a number to call in case of emergencies on the lease, and that he has successfully used it to get emergency assistance in the past.

The landlord testified that his cell phone and email address are located on the tenancy agreement as is the property manager's cell phone number. The landlord testified that the tenant did not advise of any issues with the subject rental property in December 2022 or January 2023. The landlord testified that he is always accessible and checks his email and voice messages daily.

The tenant testified that she phoned witness J.L. on December 19, 2022 and left a message on his answering machine asking for help with her frozen pipes. Witness J.L. testified that he did not receive any messages from the tenant in December of 2022 and that in any event, while he is willing to help a neighbour, he is not the property manager or the landlord and it is not his responsibility. The tenant confirmed on cross examination that the landlord at one point asked him to be the property manager and that he declined the offer. On cross examination witness J.L. testified that the landlord has, in the past, put him in the position of being a defacto on site manager because he is on site and knows the water system.

The landlord entered into evidence a written statement signed by witness J.L. which states that the tenant vandalized the unit. The tenant testified in the hearing the vandalism is willful destruction. Witness J.L. testified that he does not believe the tenant willfully caused the damage and used the wrong word in his statement. Witness J.L.'s statement states that the tenant has been hostile and aggressive. On cross examination witness J.L. testified that the tenant was upset about the burst pipe but was not hostile or aggressive towards himself.

The tenant submitted that witness J.L.'s statement was coerced by the landlord who is in a position of power over witness J.L.

The landlord testified that the tenant did not respond to his messages until January 16, 2023 when the landlord had a telephone call with her and a responding email on January 17, 2023. The landlord entered into evidence an email to the tenant dated January 5, 2023 in which the landlord details the damages caused by the burst pipe and the tenant's responsibility for same.

The landlord testified that in the January 16, 2023 telephone call the tenant agreed to be financially responsible for the damages she caused, but reneged in her January 17, 2023 email. The landlord entered into evidence an email from the tenant to the landlord dated January 17, 2023 which states:

Hello [landlord], I just now saw this email and I am going to call you right away! I am emphatically sorry and I was delayed in my return home from Vancouver due to circumstances beyond my control. Due to the extreme nature of this emergency, I intend to return tomorrow.

The landlord entered into evidence an email from the landlord to the tenant dated January 25, 2023 which states:

In our phone call that you made to me from the coast last week you did apologize for the damage that you had caused to the home in [redacted] and confirmed that you would be financially responsible for paying for the costs of repairing the damages to the home. You even provided specifics and suggested that an additional payment be made by you each month on same dates that rent is payable until the costs of repairs of the damages are paid off by you.

I have tried to reach you by phone at the number you provided recently and have been unable to reach you by phone. I phoned [witness J.L.] who said that you told him that you do not have a phone. [Witness J.L.] said that he will let you use his landline phone to make a call to me so that we can have a call together soon.

The landlord testified that the tenant left the baseboard heat off in the subject rental property during the coldest month of the year with a space heater set to "fan" mode so no heat was being produced. The landlord testified that this action placed his home at extreme risk and caused the pipes to freeze and burst. Additionally, the landlord testified that the positioning of the space heater, below a sink with the tap left on, put the landlord's property at risk of an electrical fire.

The landlord testified that the tenant is a danger to the subject rental property, put the subject rental property at significant risk and has caused significant damage to the subject rental property. The landlord testified that he believes that if the tenant remains in the subject rental property, the same thing will happen again.

In the hearing the tenant read out the following written submissions entered into evidence:

... First and foremost, the statement that I was absent from Dec.1 and had "abandoned the property is utterly false. I was away in the beginning of Dec.2022 and had left the taps dripping in my absence as is my common practice when I go away for a week or two in the winter months....

I returned on Dec.14 with no problems and was keeping the wood stove running constantly with the cabin cozy and warm for days.

The weather had been relatively mild, close to 0 degrees Celsius from Dec.14-18.

On the night of Dec. 18, 2022, we had stoked up the wood stove and the cabin was uncomfortably warm, [M.D.] was visiting and he had a bath at 11 pm, I did the dishes at 11:30pm and then went to sleep.**(I had no idea of the risk of the pipes freezing overnight, with the cabin quite warm, I did not think to leave the taps running 1 as we had been using the water regularly)

The statement that the pipes froze and burst as a result of my being away and not keeping the cabin warm are utterly false and the fact that the pipes froze while I was occupying the cabin and keeping it warm for days prior to, and subsequently to the pipes freezing, gives some substance to the argument that the pipes were inadequately insulated to withstand the winter temperatures, even when the cabin is kept heated.

The temperature dropped radically overnight, resulting in frozen pipes, and no running water on the morning of Dec.19 2022.

I discovered the frozen pipes at 8am on Dec.19 2022.

I turned the cold water taps on all the way, at the kitchen sink and the bathtub, and left them open. I opened up the cupboards under the bathroom sink :.and the kitchen sink, to expose the pipes to warm air, and plugged in a space heater in the bathroom to direct more heat at the plumbing.

I called my neighbor [witness J.L.], and left a message, saying that I had just discovered my pipes were frozen and I didn't know what to do.*(In [witness J.L.'s] statement, he has no mention of this message)

I went to my other neighbor, [B.], and told him the pipes froze, he responded by saying that the pipes in the cabin I am renting froze when a previous tenant lived there, *years* ago and that the pipes had frozen at the other rental on the property that he had occupied in the past. [B.] said that he (and the other previous

tenants) had just "stoked up the stove, and got the place really hot, which had thawed the pipes and the water came back."

I borrowed a space heater from [B.] and plugged it in, facing under the kitchen sink. I continually stoked up the stove and had the cabin uncomfortably warm, (even getting up three times in the night to stoke the fire).

The next morning (Dec. 20) the pipes were still frozen. I went over to [B.'s] and filled up some water jugs lamenting that the situation had me really stressed out. I told him that I just didn't know what to do. [B.] repeated that, in his past experience, he had just kept the cabin really warm and the water had come back on by itself.

I asked if he knew where the main water intake was going into the cabin, but he said he didn't know.

At this point, I would like to mention that the landlord has a history of neglecting to make necessary repairs in the past; The water for the cabin had ceased to flow in the summer of 2020, although attempts to contact the landlord by phone and email were made repeatedly, [the landlord] neglected to respond and he did not inform us of a property manager to contact. The plumber had said that he could not come and do; any repairs without the landlord's permission and the result was no running water at the rental for over two months. Due to this personal past experience, as well as multiple references to other tenants past experiences, I did not feel it would be helpful to attempt to contact him.

I also believed that the landlord would attempt to evict me, as he had already stated that he would like to get more revenue from the rental and I have talked to past tenants who were evicted when significant repairs were sighted to the landlord. In that case, the landlord had repaired the rental after they moved out and increased the rent significantly.

On the evening of Dec.20, I had stoked up the fire and kept the cabin really warm. I had no idea what else to do. Some friends of mine who had rented a cabin on the property for eight years, said that their pipes had frozen, on more than one occasion during their tenancy and they just got the cabin really hot and the pipes had thawed.

I imagined that by keeping the cabin really warm, the water would come back eventually. [M.D.] was moving the last of his belongings out and we had a plan to drive to Vancouver to be with family for the Holidays.

The statement that I "abandoned" the cabin and "neglected to inform anyone of the fact that I would be away" is false.** I had spoken to my friends who live nearby and informed them of the fact that my pipes were still frozen and that I intended to visit family for a week. I requested that they stop by and check on my cabin.

On the evening of Dec. 21, 2022, I spoke with [B.], my nearest neighbor, and told him that I planned on going to the coast to be with Family for the Holidays. I told him that I planned to be gone a week and the pipes were still frozen. [B.] said, "leave a space heater on and hope for the best, I guess!" I continued to stoke the wood stove to keep the cabin as hot as possible. On the morning of Dec.22, 2022, the pipes were still frozen.

I was loading up my car and [M.D.] said he would plug in the space heater in front of the kitchen sink facing under the sink.(I trusted that he set the dial for hot air and did not inspect the settings.) The heater was left positioned IN FRONT of the open cupboard, facing under the sink.** in the photos submitted as evidence, there is a picture of a rectangular shaped space heater that had stopped working on Dec.21 and was unplugged when I left the cabin on Dec.22, 2022.** I honestly imagined that the water would come back on eventually, thinking I had done all that I could. I had left the taps in the bathtub and kitchen sink opened up thinking that would encourage the water to flow when it thawed. **the statement that I had "left the taps opened up with water flowing out for weeks" is totally false.** [Witness J.L.'s] statement "the faucets were left fully open by the tenant, running full blast with water splashing onto the floor for over a month" is utterly false. The water was frozen and NOT flowing on Dec.22 (when I departed). The temperature rose, resulting in the water flowing and the cracked pipes leaking, likely on Dec. 26-29 2022.

Therefore, the water was only running for a few days before the neighbor's ran out of water which alerted them to the problem at my cabin. Since the main water valve supplying the cabin was shut off on Jan.3, the water could only have been flowing out for a week, not a month as stated repeatedly in

the statements by [the landlord and witness J.L.]. I believe the fact that the taps were opened up contributed to a reduction in damage because some of the water was able to safely drain out rather than forcing all the water to flow through the cracked pipes.

The tenant testified that she did not have a copy of the tenancy agreement, but did have the landlord's telephone number and email address. The tenant testified that she did not contact the landlord about the frozen pipes or her planned absence because she did not think he would do anything about the problem.

The tenant testified that she has witnesses to prove that she was at the subject rental property in December 2022. I asked the tenant if she wanted to call any witnesses and the tenant declined. The tenant did not present any witness statements confirming her presence at the subject rental property in December 2022. The tenant did not enter into evidence a statement from B. regarding their alleged interactions in December 2022.

The tenant read aloud another statement in the hearing, the relevant part of which states:

.... I sent [the landlord] an email on September 19, 2022, requesting a copy of the rental agreement that [M.D.] had signed on Aug.29, 2022. I did not receive a response. Although I subsequently discussed my taking over the lease over the phone and [the landlord] sent a form for [M.D.] to sign declaring that he was moving out and I would be taking over the lease, I never received a copy of the rental agreement from [the landlord].

On Oct. 1, 2022, I took over the lease (as indicated in the document that [M.D. and the landlord signed) I DID NOT SIGN ANY DOCUMENTS. In neglecting to provide me with a copy of the rental agreement, and by neglecting to provide the contact number of a property manager (while he was out of the country) I feel that [the landlord was] negligent in their responsibility as landlords.

Further, it was due to a failure to take any action whatsoever to improve the plumbing or properly insulate the pipes, (despite prior knowledge of the risk of the pipes freezing due to multiple past occurrences) as well as failure to inform the tenant of the risk, preventative measures or what to' do in case of emergency, that the situation had such tragic results. All resulting damages are due to the gross negligence of [the landlord].

The tenant testified that when she left the subject rental property on December 22, 2022 she intended on returning one week later because she knew the water/pipes situation needed attending but was unable to return due to circumstances beyond her control. The tenant did not provide any testimony on what those circumstances were.

The tenant testified that she first learned of the burst pipes on January 16, 2023 and returned to the subject rental property on January 17, 2023. The tenant testified that she does not have a cell phone and does not regularly check her email.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant of the residential property;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, and

it would be unreasonable, or unfair to the landlord, the tenant 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

The tenant's written submissions state that on December 22, 2022 she left the taps in the bathtub and the kitchen sink "opened up" to encourage water to flow when the pipes thawed. The tenant then left the subject rental property to visit family over the holidays and did not return until January 17, 2023. It is undisputed that the tenant did not inform the landlord of the frozen pipes or her planned absence, despite having his contact information.

Based on the testimony of witness J.L. and the tenant's written submissions, I find that the tenant left the property without the baseboard electric heat on and left a space heater on "fan mode" plugged into an outlet next to the kitchen tap the tenant left "opened up" and positioned below the kitchen sink. Based on J.L.'s testimony, I find that "opened up" means turned all the way on, which matches the common understanding of the words "opened up".

I concur with the tenant that some of the language used in witness J.L.'s written statement, such as the words "vandalism", "hostile" and "aggressive", do not accurately reflect witness J.L.'s recollection of events, which witness J.L. clarified in the hearing on cross examination. In rendering this Decision, I have not relied on witness J.L.'s written statement but I have relied on witness J.L.'s verbal testimony which I found to be straightforward and honest and on which the tenant was provided with an opportunity to cross examine.

I find that witness J.L.'s verbal testimony was not coerced by the landlord as the tenant readily agreed to a past issue with the water and the landlord's response to same from 2020, which was not favorable to the landlord. I find that had the tenant been fearful of the landlord or had the landlord unduly influenced witness J.L.'s testimony, witness J.L.'s candid response would not likely have been provided. I find that witness J.L.'s testimony was an honest recollection of events. I accept J.L.'s testimony that he did not receive a telephone message from the tenant regarding the pipes at the subject rental property in December of 2022. In any event, the witness is not the landlord or property

manager and was not the correct person to contact regarding an emergency with the property.

I find that while the landlord may not have responded promptly to a water issue in the summer of 2020, some 2.5 years in the past, the past issue did not absolve the tenant of her responsibility to notify the landlord of emergencies at the subject rental property such as frozen pipes which can lead to serious water damage, as is the case here.

I find that the tenant's failure to notify the landlord of frozen pipes resulted significant risk to the subject rental property. I find that while the tenant may not have had a copy of the lease, by her own testimony, she had the landlord's contact information and failed to use it. I find that the lack of a copy of the tenancy agreement is irrelevant in this context. Even if the landlord elected not to do anything about the frozen pipes, the tenant still had an obligation to notify him of same as the risk to property was patently obvious.

I find that in leaving the taps on at the subject rental property for either December 1, 2022 to January 3, 2022 (when witness J.L. turned the water off) or December 22, 2022 to January 3, 2022 (when witness J.L. turned the water off), while no one was at home, during the winter in an area where freezing temperatures are normal, put the landlord's property at significant risk of flood and water damage. I find that the tenant displayed an exceptional lack of judgment and common sense in doing so.

I reject the tenant's submission that leaving the taps running reduced the damage suffered to the subject rental property. Based on the testimony of the landlord, witness J.L. and the video and photographic evidence, I find that the entire kitchen had to be gutted to remove the water soaked materials. I find, on balance of probabilities, the damage to the kitchen was not reduced by the negligent action of leaving taps running while the subject rental property was vacant.

I find that the tenant did not present documentary evidence to support her claim that the pipes at the subject rental property are not properly insulated. I find that regardless of whether the pipes were or were not properly insulated, leaving taps on while the tenant was away for the holidays put the subject rental property at significant risk. I also note that the tenant did not leave the taps dripping, to prevent freezing, but left them open while, according to the tenant, the pipes were already frozen. If the pipes at the subject rental property were frozen at the time the tenant left the subject rental property, the tenant should reasonably have considered that in her absence, the pipes might thaw,

and water would proceed to pour from the taps she left "opened up". The tenant testified in the hearing that she initially planned on returning to the subject rental property one week after leaving because she knew that the situation with the frozen pipes needed attention, evidencing her understanding of the dangerous situation she left the subject rental property in. Leaving taps running while no one is home for days or weeks put the landlord's property at significant risk of water damage.

I also find that the tenant put the landlord's property at significant risk by leaving a space heater plugged in next to a sink and the space heater itself left below the sink with the tap left on. I find that this action put the landlord's property at significant risk of electrical fire.

I find that the tenant put the subject rental property at significant risk by leaving the heat off for over a week during freezing temperatures which put the property at significant risk of frozen pipes and resulting water damage.

I find that it would be unreasonable for the landlord to have to wait for the effective date of a notice to end tenancy to take effect given the serious lack of judgement displayed by the tenant. I find that the tenant's lack of judgement poses a serious risk to the property and that further damage may result if the tenant is permitted to reside at the subject rental property until a notice to end tenancy takes effect. Pursuant to section 56 of the *Act*, I award the landlord a two-day Order of Possession.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant. Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant and all other occupants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: February 27, 2023

Residential Tenancy Branch