



Dispute Resolution Services

Page: 1

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 this tenancy and an order of possession pursuant to section 56 of the *Act*; and
- Authorization to recover the landlord's filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord attended the hearing. The landlord had an opportunity to present affirmed testimony, call witnesses, and submit evidence.

The tenant did not attend at the hearing. I kept the teleconference line open from the scheduled time for the hearing, plus an additional thirty minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the tenant was provided with the correct call-in number and participant code.

The landlord testified he served the Notice of Hearing and Application for Dispute Resolution by registered mail sent to the tenant on January 14, 2019; he submitted the Canada Post tracking number referenced on the cover page of this Decision in support of service. Section 90 of the *Act* provides that the documents are deemed received by the tenant five days later, that is, on January 19, 2019. I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution on January 19, 2019.

Preliminary Issue: Service of Evidence

On January 18, 2019, the landlord filed materials upon which he relied in this application. The landlord did not provide evidence that he served these materials on the tenant.

The Rules of Procedure require that a party serve the other party with evidence upon which the first party relies. The Rules state:

2.5 Urgent applications

For urgent applications as outlined below, the applicant must submit all evidence with the Application for Dispute Resolution or within three days of submitting an Online Application for Dispute Resolution. If the applicant submits additional evidence for an urgent application after submitting the Application for Dispute Resolution, the arbitrator will consider whether or not to accept the evidence and may adjourn the hearing under Rule 7.8 [Adjournment after the dispute resolution hearing begins]. Urgent applications may include applications under Residential Tenancy Act section 33, 54, 56.1

The Rules of Procedure further provide as follows:

3.2 Evidence relating to an early end to a tenancy

When a landlord is seeking an early end to the tenancy, the landlord must submit all evidence with the Application for Dispute Resolution, or, when applying using the Online Application for Dispute Resolution, the next day. All evidence to be relied on at the hearing must be served on the respondent with the Notice of Dispute Resolution Proceeding Package described in Rule 3.1.

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

3.13 Applicant evidence provided in single package

Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package. An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5

The landlord did not provide evidence of compliance with the above Rules. I find the landlord did not serve the evidence upon which he relied with the Application.

Therefore, I will not consider the landlord's materials. I will only consider the landlord's oral testimony in my Decision.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An early end to this tenancy and an order of possession pursuant to section 56 of the *Act*; and
- Authorization to recover the landlord's filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Background and Evidence

The landlord testified the parties entered into a verbal month to month tenancy agreement sometime during 2017 which is ongoing. Rent is \$800.00 a month payable at the first of the month. At the beginning of the tenancy, the tenant provided a security deposit held by the landlord. The tenant has not given written authorization to the landlord to apply the deposit to outstanding rent.

The landlord testified that the tenant is currently in arrears of rent in the amount of \$5,150.00. The landlord has issued two Ten Day Notices to End Tenancy for Unpaid Rent ("Ten Day Notices"), on July 30 and September 4, 2018. The landlord did not apply for dispute resolution and an order of possession pursuant to these Notices. The landlord explained that he did not follow up on the Notices because he "procrastinates", "kept giving [tenant] another chance" and is not familiar with RTB procedures.

The landlord provided the following testimony regarding the tenant. He stated that the tenant is an increasingly problematic renter. The tenant is a large and strong man who is intimidating and frightening to the landlord and other tenants. The landlord has observed that the tenant has an increasing problem with consumption of drugs and alcohol, often has parties (sometimes with "street people") and is frequently intoxicated. The landlord said the tenant's behaviour worsened over the tenancy period and has become unbearable. The landlord said he has issued many email and written notices to the tenant beginning about six months ago in addition to the two Ten Day Notices.

The landlord testified that the tenant kicked in the doors of other units on a few occasions, increasingly acted in a loud and aggressive manner, and over time has started to threaten the landlord to "beat him up" as well as other tenants. The landlord stated he called the police many times, but the police refused to act as the tenant had not struck anyone. The landlord could not recall specific dates the incidents occurred. The landlord did not submit police report numbers or dates he called the police. The landlord did not call any witnesses at the hearing.

The landlord stated that, after applying for dispute resolution, he entered the unit without notice or the tenant's permission and saw holes in the wall, debris, garbage and cigarette-burns on surfaces. He is worried the damage will worsen.

The landlord said he could not wait any longer to get the tenant out and therefore had not issued any more Notices to End Tenancy.

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.

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 well-being 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.

As outlined above, there are two separate components to section 56 of the *Act*, both of which need to be met for the landlord to obtain an early end to a tenancy. The second component requires that the landlord demonstrate that it would be unreasonable or unfair to wait for consideration of a standard One Month Notice to End Tenancy for Cause.

In this case, the landlord said he issued to the tenant two Ten Day Notices on July 30 and September 4, 2018; the landlord seemed uncertain as to how to proceed further. He said he

kept giving the tenant “another chance”. The landlord acknowledged his limited understanding of the residential tenancy legislation and processes.

However, the Information Officers at the Residential Tenancy Branch are accessible by telephone and email, and available for in-person consultation at the office located in Burnaby, to provide assistance to both landlords and tenants regarding the process to be followed when a tenancy agreement is in dispute and what the appropriate remedies are under the *Act*.

In any event, the only matter before me at this hearing was the landlord’s application for an early end to tenancy.

The landlord gave sworn testimony that on unspecified dates the tenant threatened to “beat him up” as well as other tenants.

Given there are other occupants residing in the building affected by the tenant’s actions, the landlord failed to call any witnesses to attest to his threatening behaviour and damaging actions. The landlord confirmed that the police did not arrest the tenant during any of the incidents.

As the landlord is the applicant in this matter, he bears the burden, on a balance of probabilities, to prove that the high standard of criteria required under section 56 of the *Act* has been met. This means not only proving that there are grounds for ending the tenancy for cause, but that it would be unfair or unreasonable to the landlords to wait for a One Month Notice to End Tenancy to take effect.

While the landlord has made serious allegations, the landlord failed to provide corroborating evidence or witness testimony in support of the allegations. If the tenant’s behaviour met the significant and serious threshold of the criteria set out in section 56 provided above, it is reasonable to expect that the landlord could have provided corroborating witness testimony from the other occupants in the rental premises or the police.

The landlord was unable to provide a police file number for any incident in which he stated he called the police. To end this tenancy early without the issuance of a One Month Notice for Cause, I find that the landlord would require more corroborating evidence than relying solely on his own testimony.

In considering the evidence submitted, I find the landlord has not met the standard of proof required for his application. Section 56 of the *Act* is reserved for situations where a tenant’s actions have escalated to the extent that the delay involved in issuing a One Month Notice for Cause and waiting for that Notice to take effect would be unreasonable or unfair.

In this case, I am satisfied that there *may* be cause to end this tenancy pursuant to section 47 of the *Act*; however, I am not satisfied that the landlord has sufficiently met the burden of proving

that it would be unreasonable or unfair to wait for a One Month Notice to End Tenancy to take effect, as is required in order to end a tenancy early pursuant to section 56 of the *Act*.

Conclusion

I dismiss the landlord's application for an early end to tenancy and recovery of the application fee without leave to reapply. This tenancy continues until ended in accordance with the *Act*.

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 07, 2019

Residential Tenancy Branch