



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing was scheduled to deal with a landlord's application made on March 22, 2019 for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act. The landlord appeared for the hearing, but there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord testified that the proceeding package was sent to the tenant on March 23, 2019 by registered mail. I was provided the registered mail tracking number. A search of the tracking number showed that the registered mail was successfully delivered to the tenant on March 26, 2019. Accordingly, I was satisfied the tenant was notified of today's hearing.

As for the landlord's documentary evidence, the landlord testified that her evidence was not included in the proceeding package sent on March 23, 2019. Rather, the landlord sent two more packages to the tenant containing the landlord's evidence: on March 28, 2019 and March 29, 2019.

The Rules of Procedure provide the following with respect to serving a respondent the proceeding package and evidence. Rule 3.2 in particular deals with serving evidence for an early end of tenancy, as in this case.

### **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

### **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.

[My emphasis underlined]

The landlord did not serve the tenant with the landlord's evidence in accordance with the Rules of Procedure. Accordingly, I did not admit the landlord's documentary evidence. However, the landlord was given every opportunity to present her case orally to me during the hearing.

#### Issue(s) to be Decided

Has the landlord established that the tenancy should end early and obtain an Order of Possession as provided under section 56 of the Act?

#### Background and Evidence

The tenancy started on February 15, 2019. The landlord did not prepare a written tenancy agreement for the parties to sign. On March 22, 2019 the landlord made this Application seeking an early end of tenancy and Order of Possession under section 56 of the Act.

In making her Application, the landlord wrote the details of dispute as being:

The tenant has a Police record, only just found out yesterday. (Rap Sheet)  
The tenant is smoking in the suite, not sure if it is tobacco or some other substance. The tenant has a lot of strange men visiting at different times of the day. I suspect that the tenant is starting to set up a Marijuana operation, bringing a lot of equipment into the suite. I have filed a report with the White Rock Police - Waiting for a Police file number - Con K. De Lenardo. I live on my own upstairs. 76 years

During the hearing, I asked the landlord to describe the primary reason for seeking to end the tenancy. The landlord's first response was that the tenant has not paid rent. The landlord testified that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail sent on March 11, 2019. The tenant picked up the registered mail but has not paid the rent and continues to reside in the rental unit. The landlord acknowledged that she did not file a separate Application for Dispute Resolution to pursue an Order of Possession for unpaid rent and made this Application because of the "combination" of issues.

The landlord also testified that she believes the tenant's daughter is also residing in the rental unit and that she understands the tenant's daughter is "kind of violent". The landlord described hearing shouting and screaming frequently from the rental unit, which is a basement suite below the landlord's residence. The landlord has called the police on a number of occasions and, according to the landlord, the police have told her that there is a hole in the bathroom door.

The landlord testified that she believes the tenant or other persons are smoking in the rental unit and they tenant may have multiple pets, both of which would violate their agreement.

The landlord also testified that she has seen "strange men" coming and going from the rental unit.

The landlord stated that she does not feel safe in her home given all of the above described activity.

## Analysis

Section 56(2) of the Act permits the Director, as delegated to an Arbitrator, to make an order to end the tenancy early, on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early under this provision I must be satisfied that:

(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.

[Reproduced as written with my emphasis added]

The landlord bears the burden to prove the tenant, or persons permitted on the property by the tenant, has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice to End Tenancy for Cause. The burden is high as this provision is intended to apply in the most urgent and severe circumstances.

The first issue brought forth to me by the landlord concerned unpaid rent. While unpaid rent is a basis for ending a tenancy, there is a procedure in place for evicting a tenant for unpaid rent. An Application for an early end of tenancy under section 56 is processed on an expedited basis and is not to be used to bypass normal procedures in place for other matters, including unpaid rent. This is to prevent applicants from jumping the queue. As I informed the landlord during the hearing, she remains at liberty to pursue an Application for Dispute Resolution to obtain an Order of Possession for unpaid rent.

As for the landlord's statements that she understands there is damage to the bathroom door due to violence on part of the tenant's daughter, I find the hearsay evidence in the absence of any other evidence such as photographs or the testimony of a witness to be insufficient for me to conclude the tenancy should end on an urgent basis due to extraordinary damage to the property.

As for the landlord's testimony that she has heard yelling and screaming coming from the rental unit, I accept that conduct would be unreasonably disturbing and may be grounds to end a tenancy for cause; however, I did not hear evidence from the landlord that the yelling or screaming is directed at her or that the landlord is at undue risk. Accordingly, such conduct may be grounds for issuing a 1 Month Notice to End Tenancy for Cause and waiting for such a Notice to take effect but not an urgent early end of tenancy.

As for the allegations of smoking in the rental unit and the tenant having multiple pets, contrary to the parties' agreement, that may be a basis for ending the tenancy for cause; however, I find the testimony in the absence of photographs of damage or other evidence that would demonstrate imminent and serious risk to the property or health or safety of other occupants to be insufficient for me to conclude that the tenancy must be ended immediately and that it is unreasonable to wait for a 1 Month Notice to End Tenancy for Cause to take effect.

As for the landlord observing "strange men" coming and going, I reject that as a basis for ending the tenancy.

In light of all of the above, I accept the landlord may have a basis for obtaining an Order of Possession for unpaid rent; and, possibly a basis for ending the tenancy by issuing a 1 Month Notice to End Tenancy for Cause; however, I find the circumstances described to me by the landlord do not warrant an early end of tenancy due to urgent and severe

circumstances as provided under section 56 of the Act. Therefore, I dismiss the landlord's application without leave.

Conclusion

The landlord's application for an early end of tenancy and Order of Possession under section 56 of the Act is dismissed without leave.

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: April 18, 2019

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Residential Tenancy Branch