



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution to end the tenancy early and obtain an Order of Possession, and to recover the filing fee from the Tenant.

Both parties appeared for the hearing and provided testimony. The Landlord testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents, as well as documentary evidence in person on July 5, 2019. The Tenant confirmed receipt of this package. The Landlord filed his application on June 24, 2019, yet he did not serve his Notice of Hearing and evidence to the Tenant until July 5, 2019. He did not explain why he waited so long to serve these documents. Further, the Landlord did not upload his evidence until the day before the hearing.

I note that the rules of procedure state as follows:

10.2 Applicant's evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

10.3 Serving the notice of dispute resolution proceeding package

The applicant must, within one day 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:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;

- the Respondent Instructions for Dispute Resolution;
- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [*Applicant's Evidence Relating to an Expedited Hearing*].

The Landlord did not submit all of his evidence in accordance with rule 10.2 or 10.3 at the time he filed his application for an early end to tenancy. He waited until 1 day before the hearing to upload his documentation to our Branch. I note this is an expedited hearing process, whereby the parties are expected to adhere to timelines very closely. The Landlord is required to serve the Tenant **and** our office within the appropriate timelines. As this was not done, I find the Landlord's documentary evidence is not admissible and will not be considered. The Landlord provided testimony at the hearing which will be considered.

The Tenant stated he sent his evidence by registered mail on July 10, 2019. The Landlord confirmed his address and stated he never got this package. The Tenant provided tracking information. Pursuant to section 89 and 90 of the Act, I find the Landlord was deemed to have received the Tenant's evidence package on July 15, 2019, 5 days after it was mailed. However, I note this is one day before the hearing, and this evidence is late. I note the following rule of procedure:

10.5 Time limit for respondent's evidence

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and **at least two days before the hearing**.

As the Tenant's documentary evidence was served late, I will not consider it any further. The Tenant provided testimony at the hearing which will be considered.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord stated that there are a few rental units in the building and there have been multiple complaints from neighbours regarding the Tenant's behaviour. The Landlord stated that he has had people move out of the building because the Tenant has parties, makes loud noises, yells, and has guests over who use drugs. The Landlord stated that the email he got from another person in the building highlighted a few concerns he had. That person complained of numerous guests coming and going at all times, often looking like they were heavy drug users. He also complained of constant noise, smoking, misuse of guest parking, and garbage left lying around. The Landlord also explained that the police have been called on a couple of occasions. However, no police reports were provided into evidence. The Landlord stated that the Tenant changed the locks, and has stopped paying rent.

The Tenant stated that the Landlord has exaggerated the events. The Tenant explained that although the police have been called, it was in part because of an interaction he had with the Landlord, where the Landlord attended and wanted to enter the rental unit. The Tenant also acknowledged that he had a noise issue on one night at the end of June where one of his guests was intoxicated and making noise when he wasn't home. The Tenant stated he came home right after hearing about the issue and sorted it out. The Tenant denies that he has made any loud noises, and stated it is an old building with poor sound proofing. The Tenant also stated that he only changed the locks because he lost his key, and wanted to keep his place safe, not to interfere with the Landlord. The Tenant further stated that no other tenants have complained to him. The Tenant denies that he has drug users over, or that he or his guests are dangerous or disruptive to others.

Analysis

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 a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause.

Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 56 of the Act.

An application for an early end of tenancy under section 56 of the Act is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, there is sufficient cause; and, 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.

I have carefully considered the evidence of both parties and I make the following findings in this dispute. It is clear based on the testimony from both parties that the relationship between the Tenant and the Landlord has degraded significantly. The Landlord explained some of the Tenant's problematic behaviour but the Tenant refutes this version of events and says it is untruthful and exaggerated. The Tenant acknowledged a couple of the issues the Landlord had (loud guest in late June, changing locks, police have attended to investigate disturbances). However, I find the majority of the Landlord's allegations are refuted by the Tenant and the ones that are not, are insufficient to warrant an early end to this tenancy.

I note that both parties disagree on the nature and extent of the disputes that have occurred so far between the Tenant, the other occupants, and the Landlord. Although it is clear that some dysfunction is occurring, I find the Landlord's disputed evidence of the incidents is insufficient to substantiate that there is cause to end the tenancy in an expedited manner. As a result, I am unable to end this tenancy early, without further evidence from the Landlord.

Given the Landlord was not successful in this hearing, I decline to award him the recovery of the cost of the filing fee he paid to make this application.

Conclusion

The Landlord has not met the burden to prove the tenancy should end early. Therefore, the Landlord's Application is dismissed without leave to re-apply and the tenancy will continue until such time it is 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: July 16, 2019

Residential Tenancy Branch