



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0893160 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This expedited hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- - An order for early termination of a tenancy pursuant to section 56;
 - A monetary order for reimbursement of the filing fee pursuant to section 72.

JL attended as one of the landlords and as agent for the corporate landlord (“the landlord”).

The landlord had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process. The landlord called the witness LD who provided affirmed testimony.

The tenants did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten 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 correct call-in number and participant code for the tenants was provided.

The landlord testified the landlord served the tenants with the landlord’s Notice of Hearing and Application for Dispute Resolution by posting to the tenants’ door on May 14, 2020, thereby effecting service under section 90 three days later, that is, on May 17, 2020. The landlord submitted photographs of the tenants’ door with two complete sets of documents posted to the door.

The Director's Order of June 26, 2019 states that a party to an application for dispute resolution set down under Rule 10 of the Rules of Procedure for a hearing date that is between 12 and 16 days after the date the application is made must serve their material as set out in paragraph 2 of the Order.

Paragraph 2(b) states that the party may attach a copy to a door or other conspicuous place at the address at which the person resides.

This application is an application under Rule 10 as it is an application for an expedited hearing to be heard on short notice to the Respondent. Further to Rule 10, section 2(b) of the Order of June 26, 2019 and in consideration of the undisputed testimony of the landlord supported by photographs, I find the landlord served the tenants as required.

Issue(s) to be Decided

Is the landlord entitled to:

- An order for early termination of a tenancy pursuant to section 56;
- A monetary order for reimbursement of the filing fee pursuant to section 72.

Background and Evidence

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

The landlord provided the following uncontradicted testimony. The tenancy began on February 1, 2020 for monthly rent of \$1,850.00 payable on the first of the month. The tenant provided a security deposit of \$825.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement. The landlord testified the tenants are in arrears of rent of \$2,860.00.

The landlord has applied for an early end of tenancy and an order of possession.

The landlord testified that the tenants' unit is the upstairs of a building; another

apartment is immediately below the unit. The occupant of the downstairs unit called the landlord on April 18, 2020 and said there was a water leak in his ceiling; he sent pictures showing a ceiling water stain which were submitted by the landlord as evidence.

The landlord testified he called and sent texts to the tenants which were ignored or blocked. The landlord then went to the unit on April 19, 2020, knocked and was denied entry by the tenants who would not open the door. The landlord stated he explained to the tenants outside the closed door that there was a leak in the unit, and he had to get in to fix it. The tenants swore at the landlord ("screamed") and said they would "kick his ass" and "smash your head with a hammer" if he came in.

The landlord stated matters worsened in the following days. He testified that the drywall on the ceiling of the downstairs apartment started to crumble and fell off the ceiling from water saturation. The landlord submitted photographs of the fallen, crumbled, soaked drywall. The landlord stated he has removed sections of the ceiling and submitted supporting photographs.

The landlord stated that he attempted to "defuse the situation" by requesting that the tenants let him in to repair the leak. His calls and texts were ignored. The landlord posted a Notice to Enter in the RTB form on April 21, 2020 requesting a time for entry the following day. The landlord testified he was denied entry when he attended pursuant to the Notice.

The landlord attended at the unit on May 11, 2020 with LD who was called as a witness. The landlord testified they knocked and requested entry. The tenants did not open the door but responded with "vulgar and belligerent screams" that were audible when they walked away. The landlord and the witness stated the tenants threatened violence if they tried to come in.

The landlord's witness LD testified he is an electrician and he examined the downstairs ceiling on May 11, 2020. He observed that water had destroyed portions of the ceiling drywall and the laminate flooring. LD testified that mold is growing in the apartment. Most seriously, he stated that rust is appearing in the furnace ducts; he opined that the water may have a dangerous effect on the building's electrical system if unchecked. He expressed the opinion that the ongoing water damage was a potential fire problem if the water came into contact with the electrical system.

The witness LD stated that he intends to immediately report the matter to BC Hydro as

a serious health and safety issue because of the risk of fire to the building.

The landlord requested an Order of Possession based on section 56 of the Act as follows:

The tenant has:

- (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;*

The landlord stated that it was unreasonable or unfair to the landlord and the downstairs occupant to wait for a notice to end the tenancy under section 47 (landlord's notice).

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord to establish on a balance of probabilities that they are entitled to an order for an early end of the tenancy.

To end a tenancy early, the landlord must prove that the tenant has done something contrary to section 56 **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause ("One Month Notice"). Section 56 of the Act provides as follows [emphasis added]:

Application for order ending tenancy early

56 (1) *A landlord may make an application for dispute resolution to request an order*

- a. ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and*
- b. granting the landlord an order of possession in respect of the rental unit.*

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a

landlord's application,

- 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

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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The landlord relied primarily on sections 56(2)(a)(i)(ii) and (iii), that is, that *the tenant or a person permitted on the residential property by the tenant has 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 interest of the landlord or another occupant; put the landlord's property at significant risk;*

I have given significant weight to the oral testimony of the landlord which I find was supported in all key aspects by photographs and the testimony of the witness LD.

The landlord gave candid, forthright, credible evidence establishing that the tenants' unit is the source of a serious water leak that is damaging the building in which the unit is located. I find the water leak has damaged the downstairs apartment leading to the removal of a portion of the ceiling and other damage such as destruction of the flooring. I accept the landlord's testimony supported by the witness that there is a health and safety risk of fire if the leak goes unchecked. The landlord was believable in describing

the threats received by the landlord and the witness as they attempted to enter the unit, investigate the source of the leak and conduct repairs.

I find the landlord has established that the ongoing water leak is significantly interfering with the landlord, the building, and the downstairs occupant; I find the tenants refusal to allow the landlord to conduct repairs to put the property at significant risk; I find the unrepaired water leak seriously jeopardizes the health and safety of all occupants of the building, including the tenants.

Most importantly, I believe that the landlord has valid reasons for his concerns about the water leak causing a fire and being a health and safety risk.

On a balance of probabilities and for the reasons stated above, I find that the landlord's application satisfies all requirements under section 56 of the *Act*. I find that the landlord provided sufficient evidence that it would be unreasonable to wait for a hearing for a One Month Notice, as the testimony and evidence presented by the landlord demonstrated a significant risk of considerable structural damage as well as fire in the building in which the unit is located. I find it would be unreasonable and unfair to the occupants of the building and the landlord to wait for a hearing on a One Month Notice.

Accordingly, I allow the landlord's application for an early end to this tenancy and an order of possession will be issued effective on two days notice.

I grant the landlord a monetary award for reimbursement of the filing fee of \$100.00.

Conclusion

I grant an **order of possession** pursuant to section 56 (Early End of Tenancy) to the landlord effective **two days** after service of this Order on the tenants. Should the tenants 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 a monetary order in the amount of **\$100.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court to be 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 *Residential Tenancy Act*.

Dated: May 29, 2020

Residential Tenancy Branch