



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This 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;
- Authorization to recover the filing fee for this application pursuant to section 72.

All parties attended. The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence. The tenants acknowledged service of the landlord's materials on May 29, 2020.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Preliminary Issue: Adjournment

At the commencement of the hearing, the tenants sought an adjournment.

The tenants testified there were many reasons why they needed an adjournment. For example, they claimed they did not feel well as a result of consuming water for which a boil advisory warning had been issued some weeks ago causing them to seek medical help; no hospitalization took place.

The tenants also claimed that they wanted more time to obtain documents requested through a FOIPA request to the police. There is additional evidence, salient to this case, that had not been previously provided to the RTB and an adjournment would allow the tenants to provide the additional evidence.

The tenants stated that an adjournment was *not* needed to help the parties reach a resolution; they testified that the acrimonious relationship with the landlord would “go to a higher court” and there was no solution at this time.

The landlord objected to the request for the adjournment. The landlord stated that the police had been called to the unit so many times that they threatened to make arrests if they were called again. The landlord denied there was any evidence in the police files that was not available to the parties at the hearing.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

I determined that an adjournment of this case would not assist the parties in resolving the issues; all parties acknowledged this.

I find that the tenants prepared for a hearing which took place June 5, 2020 and had three weeks notice of this hearing; reference to the file number appears on the first page. I find the tenants themselves are responsible for any failure to organize material in time for today’s hearing.

Lastly, I found there was no prejudice to the parties in proceeding and there was

possible prejudice to the landlord if there were delay.

Based on the testimony, a consideration of the evidentiary evidence to which I was referred, and the above guidance in Rule 7.9, I found the tenants did not meet the burden of proof with respect to their request for an adjournment.

Accordingly, I denied the tenants' adjournment request pursuant to Rule 7.11.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

During the hearing I warned the tenants about disrupting the hearing by talking loudly, failing to stop talking when I requested, and assuring that only one tenant spoke at a time. The hearing lasted 82 minutes and included considerable acrimonious testimony. The parties have widely divergent points of view of what has taken place.

In my Decision, I have only considered and referenced relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The landlord provided the following uncontradicted testimony. The fixed term tenancy began on October 1, 2019 and is scheduled to end on June 30, 2020. Rent is \$977.00 monthly payable on the first of the month; the rent was set in the previous arbitration. The tenant provided a security deposit of \$550.00 and a pet deposit of \$275.00 which the landlord holds. The tenant is in arrears of rent of \$100 for April 2020, \$988.00 for May 2020 and \$977.00 for June 2020. The tenants stated they are unable to pay rent.

The landlord submitted a copy of the signed tenancy agreement. The landlord explained the unit is in a multi-unit building; the building is an older wood building and sound travels easily.

The parties submitted considerable oral testimony as well as supporting documents which included videos, screenshots, texts, written submissions, and correspondence to

and from the parties and others. Not all this evidence is reproduced or discussed here.

The key points of the landlord's evidence are as follows:

1. The tenants have an acrimonious relationship with the occupants of the apartment immediately above the unit with whom the male tenant was previously acquainted;
2. The tenants complained to the landlord that the upstairs occupant was noisy and made a racist comment to the tenants;
3. The tenants and the landlord disagreed on several issues regarding the tenancy; the tenants brought an application for dispute resolution which was the subject of the previous arbitration heard June 6, 2020;
4. The landlord stated that matters have worsened during the tenancy with the tenants' noise, calling the police on the upstairs tenants many times, and tenants' use of online posting to disparage the upstairs occupant;
5. The male tenant has increasingly expressed angry and threatening rhetoric to the landlord which has escalated over time;
6. In a recent email, the tenant stated (in part), "I'm going public with this shit storm you've created by being a useless negligent landlord with no regard for his tenant.... I'm a marketing expert. Good luck."
7. The male tenant has posted disparaging social media content about the upstairs occupant;
8. Several copies of screenshots of ongoing website postings were submitted with overt or veiled threats of harm to the upstairs occupant, pejorative descriptions of the upstairs occupant, including a named photograph of her with her address, overlaid with an accompanying banner reading, "RACIST CHILD ABANDONER DRUNK – DO YOU KNOW THIS RACIST SCUM; in a separate posting, the resume of the upstairs occupant appeared with they words, "THEY FIRE HER YET";
9. The male tenant acknowledged responsibility for the postings which he stated was in fair response to the actions of the upstairs occupant;

10. The male tenant has engaged in many acts of disruptive and aggressive behaviour towards staff; a video was submitted of the male tenant screaming from the balcony of the unit;
11. The male tenant submitted an email of apology acknowledging, "I've raised my voice after hours on the day of and many instances of similar behaviour from the upstairs...".
12. The landlord stated the tenants cannot get along with anyone, are belligerent, and argue and create disturbances which are progressively getting worse.

The tenants deny the landlord's version of events and claim they are "victims" of a "desperate attempt at a constructive eviction" by the landlord who has no grounds.

The tenants submitted considerable evidence purportedly showing that the upstairs occupant causes noise and disturbances leading to the tenants reporting them numerous times to the police, such as on 4 occasions in a 1-month period. They submitted written descriptions of being "nice and neighbourly" when confronted with "domestic situations" regarding the upstairs occupant who was "screaming threats off her balcony". They deny all responsibility for disturbances.

The male tenant acknowledged the social media postings disparaging the upstairs occupant referenced above and asserted they were justified because of an alleged racial slur and other offenses.

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;

The landlord stated that it was unreasonable or unfair to the landlord and the other occupants to wait for a One Month's Notice to take effect under section 47 (landlord's notice).

The landlord requested an Order of Possession effective immediately and reimbursement of the filing fee.

Analysis

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 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*
(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.*
- (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) 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.*

The landlord gave candid, forthright, credible evidence supported by documentary evidence. The landlord was believable in all aspects of his testimony. I have given significant weight to the oral testimony of the landlord which I find was supported in all key aspects by documentary evidence.

I acknowledge that the tenants' testimony was not the same as the landlord's in many respects. However, I prefer the landlord's version of events as the more reasonable and believable given the documentary evidence.

As acknowledged by the male tenant, I find he posted disparaging, malicious and insulting assertions on public websites about the upstairs occupant who was noisy. I accept the landlord's testimony that the tenants' actions have caused considerable distress and anxiety to both the upstairs occupant and the landlord.

I accordingly find that the tenants have significantly interfered with or unreasonably

disturbed the upstairs occupant and the landlord.

I find that the testimony and evidence presented by the landlord demonstrated an increased pattern of unacceptable behavior by the tenants including the above-described postings and verbal outbursts. I find that the landlord provided sufficient evidence that it would be unreasonable to wait for a hearing for a One Month Notice.

On a balance of probabilities and for the reasons stated above, I find that the landlord's application meets the burden of proof and satisfies all requirements under section 56 of the *Act*.

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 which I direct the landlord may deduct from the security deposit.

Conclusion

I grant an **Order of Possession** pursuant to section 56 (Early End of Tenancy) to the landlord effective **on two days' notice**. This Order must be served on the tenants.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

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: June 19, 2020

Residential Tenancy Branch