



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, ET**

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

FG attended as agent for the 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 tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 53 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 tenant was provided.

The landlord testified that the landlord personally served the tenant with the Notice of Expedited Hearing and the evidence package on July 14, 2020. The landlord stated she reminded the tenant of the hearing a few days in advance and he stated he would not attend. I find the landlord served the tenant as required by the Act.

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

The landlord provided uncontradicted testimony as the tenant did not attend the hearing. I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

FG, the agent who attended for the landlord, testified she has been the building manager since 2015. She believed the tenant has resided in the unit since 2007 but she does not have a tenancy agreement. Rent is currently \$527.00 in a multi-residential apartment building. The landlord believed the tenant provided a security deposit but is not certain of the amount due to many changes of building managers over the years.

Regarding the reasons for requesting an Order of Possession, the agent FG provided affirmed testimony as follows. FG stated that she has observed that the tenant's living habits have become increasingly unclean and disturbing to other occupants. For example, the tenant, who is incontinent and lacks bowel control, has recently refused to properly dispose of his adult pads. FG stated she has inspected the unit and found the stained and unhygienic used pads on the bathroom floor. The strong smell of urine and feces pervaded the hallway outside his unit as well as adjacent suites. Occupants of the building have repeatedly complained to the landlord about the odour.

FG stated that the tenant has become unable to ascertain when he has no electricity; as a result, when the breaker is tripped, he does not comprehend what has occurred and does not report the outage. As a result, FG has observed that the tenant's food has rotted in the fridge, yet the tenant continued to eat it either without knowing that the food was spoiled, or being indifferent to its condition.

FG reported that the most serious incidents have recently occurred which resulted in the issuance of a One Month Notice to End Tenancy for Cause served on June 25, 2020.

FG provided affirmed testimony as follows. The tenant has started to let the water run “all day and all night”. He washed items in the sink and places them on the floor saturated with water. The water has damaged most of the floor on the unit and started seeping into the basement below.

FG testified that water damage in the storage units below has created an urgent situation. The landlord is concerned about extensive water damage if the leak is not stopped right away.

FG stated that she has spoken to the tenant many times about these and other matters to no avail.

FG has attempted to get assistance for the tenant. At her request, the police came to the unit in mid-June 2020 to do a “wellness check” on the tenant. They were unable to enter the unit without an air-supplied respirator because of the overwhelming odor. The police informed FG they were unable to do anything.

The tenant also informed “Mental Health” of the situation; a representative attended to the unit, but no action was taken.

FG testified she has discussed these and other issues many times with the tenant. The tenant denied there is any smell or that water is leaking from his unit. He appeared unaware that anything needed to be done about the smell, the leaking water, and other issues of concern to the landlord.

The landlord submitted three letters of tenants SM, JE and LS in support of her testimony. The letters confirm the landlord’s observations.

The landlord requested an Order of Possession based on section 56 of the Act as 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 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 1:00 PM on July 31, 2020 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)(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; and put the landlord's property at significant risk;*

The landlord gave candid, forthright, credible evidence supported by letters from three tenants. I accept the landlord's evidence and make the following findings.

I accept the evidence and find that the tenant's behaviour has become increasingly disturbing and unhygienic. I accept her evidence that he is unable or unwilling to remove urine and feces stained items from his unit resulting in stench upsetting to other residents. I accept that the tenant is unable to attend to normal home issues (such as identifying when the breaker has been tripped) and that he is engaging in unhealthy and unsafe consumption of spoiled food. I accept that the tenant repeatedly washed items in the unit leading to water saturation of the floor; the water is leaking causing increasing

and ongoing damage to the basement of the building. I accept the landlord's evidence as to the futility of attempting to help the tenant.

As I have accepted the landlord's evidence and made the above findings, I accordingly determine that the landlord has met the burden of proof on a balance of probabilities that the tenant has, as alleged:

- (i) significantly interfered with or unreasonably disturbed other residents of the building;*
- (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.*

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 damage to the building by uncontrolled leaking from the unit.

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 at 1:00 PM on July 31, 2020 as requested.

I find I am unable to assess serious issues affecting the tenant. I direct the landlord to immediately provide a copy of this Decision and Order of Possession to the Public Guardian and Trustee as follows:

**Public Guardian and Trustee of British Columbia
700-808 West Hastings Street
Vancouver, British Columbia
V6C 3L3
Ph: 604.660.4444
Fax: 604.660.0374**

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 **1:00 PM on July 31, 2020**. This Order must be served on the tenant. 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: July 20, 2020

Residential Tenancy Branch