



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

This hearing dealt with an *Application for Dispute Resolution – Expedited Hearing* by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for an early end of a tenancy and an order of possession pursuant to section 56.

The landlord attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the landlord's Notice of Hearing was personally served on the tenants on September 22, 2020; a completed document Proof of Service in the RTB form was filed. The landlord testified that the evidentiary package was served on the tenants by registered mail sent September 24, 2020; the landlord submitted the receipt and tracking number which is referenced on the first page. Under section 90, the registered mail is deemed received on the fifth day after mailing, that is, September 29, 2020.

Further to the landlord's testimony and submitted documents, I find the landlord served the tenants on September 29, 2020 pursuant to the provisions of the Act.

The tenants did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty-five minutes to allow the tenants 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.

Reference to the tenants herein is in the singular.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for early termination of a tenancy pursuant to section 56.

Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing.

The parties entered into a tenancy agreement effective February 15, 2020 for a fixed term tenancy ending May 31, 2020; the tenancy continued thereafter on a month-to-month basis. The monthly rent is \$4,100.00 payable on the first of the month. The tenant provided a security deposit of \$2,050.00 and a pet deposit of \$500.00 which the landlord holds.

The landlord explained the unit is a restored home located on a large fenced lot. The landlord testified that the unit was in “immaculate shape” when the tenant moved in having just been restored/repared immediately before.

The landlord submitted considerable oral testimony supported documentary evidence. Not all this evidence is reproduced or discussed here.

The key points of the landlord’s testimony are as follows:

- 1) The tenant stopped paying rent due September 2020 and no rent has since been paid;
- 2) The landlord filed an application for an Order of Possession and Monetary Order which is scheduled to be hearing on November 5, 2020; reference to the file number appears on the first page;
- 3) On September 15, 2020, the landlord went to the unit to talk to the tenant about the outstanding rent and to carry out the inspection;
- 4) The landlord was accompanied by two friends who observed that the gate to the property was broken and appeared to have been hit by a truck; the friends were not allowed to accompany the landlord into the unit, but both submitted written statements describing what they observed;
- 5) The landlord described being followed by an “unknown man with a video camera” while she was walking through the unit;

- 6) The landlord stated that the unit was in bad repair and testified as to the condition;
- 7) There was a lot of old garbage with an “overwhelming” smell both inside and outside the unit; based on the amount of garbage, the landlord testified she believed that the garbage had never been removed from the site;
- 8) There were deep dog claw marks on the window sills and doors;
- 9) Two interior doors were missing;
- 10) There were remains of a fire in the middle of the driveway;
- 11) Rails on the stairway were broken;
- 12) The gate was broken, and the tenant said it looked like a truck had hit it;
- 13) The landlord reported the matter to the police.

The landlord submitted an extensive evidentiary package including photographs, texts, witness statements, and a police report number.

The landlord testified there is serious damage taking place which she fears will continue as long as the tenant is in possession.

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 to wait for a One Month's Notice to take effect under section 47 (landlord's notice).

The landlord requested an Order of Possession.

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 section 56(2)(a)(i), (iii) and (v) that is, that *the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, put the landlord's property at significant risk and caused extraordinary damage to the residential property;*

Policy Guideline 51 – Expedited Hearing provides guidance on the issuance of Orders of Possessions in these circumstances. The Guideline states in part:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

The landlord gave candid, forthright, credible evidence supported in all material aspects by documentary evidence. I have given significant weight to the evidence of the landlord. The landlord was believable in describing the condition of the unit, her distress, and fear of ongoing severe damage.

Considering the testimony and evidence, I accordingly find that the tenant has *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, put the landlord's property at significant risk and caused extraordinary damage to the residential property;*

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 ongoing damage to 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.

During the hearing, I cautioned the landlord to take all reasonable care to protect their safety. I advised the landlord to seek the protection and services of the police and to consult RTB about safety measures going forward.

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 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: October 09, 2020

Residential Tenancy Branch