



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 the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for an early termination of tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the Notice Expedited Hearing, however denies he received the landlord's evidence, consisting of letters from other tenants in the building. The landlord testified he served the tenant with his evidence when he sent the Notice of Dispute Resolution Proceedings package by registered mail on September 19, 2020. The landlord testified that the letters were included in the package which he mailed out by registered mail. The tracking number for the mailing is recorded on the cover page of this decision.

Preliminary Issue – landlord's evidence

The Residential Tenancy Branch Rules of Procedure state:

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.

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the

Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The tenant acknowledged he received in his Notice of Dispute Resolution Proceedings package a copy of a One Month Notice To End Tenancy for Cause and the Notice of Expedited Hearing. He repeatedly stated that he doesn't have the 4 letters 'supposedly' written by the other tenants in the building which was included in the evidence supplied to me.

Although the parties dispute whether the landlord ever served the tenant with the letters from the other residents in the building, the fact remains that the tenant does not have those material before him to dispute the allegations made against him. I find that it would cause an unreasonable prejudice to the tenant if I were to accept evidence that the tenant does not have in his possession and in accordance with Rule 3.17, I decline to admit the letters from the other residents as evidence in this proceeding.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to show that the tenancy should end early for an imminent danger to the health, safety or security of the landlord or a tenant?

Background and Evidence

The landlord gave the following testimony. The tenant is a drug dealer. The building has street people coming and going to and from the building of 12 units. Before the tenant moved in, the building was a quiet residential place but since the tenant moved in, there has been constant traffic in and out of the tenant's

unit. The tenant has threatened the other tenants saying that harm would come their way.

The landlord testified that none of the other tenants have been physically harmed by this tenant or his guests but they have been verbally threatened. The landlord did not ask any other tenants to attend the hearing to provide testimony as they are all working.

The landlord testified that he personally served the tenant with a One Month Notice To End Tenancy for Cause on August 23rd. A copy of the notice was provided as evidence and the tenant acknowledges he has a copy of it. The landlord testified that he has not been served with any notice to dispute the One Month Notice To End Tenancy for Cause by the tenant.

The tenant gave the following testimony. He did not threaten violence towards any of the building occupants. No verbal threats were ever made by him to anybody during the entire time he's lived in the building. He doesn't pose a threat of violence to anyone in the building. He does not have any letters from the building occupants alleging misbehaviour.

The tenant testified he filed an application to dispute the landlord's One Month Notice To End Tenancy for Cause served upon him on August 23rd. He supplied the dispute file number at the hearing and with the parties' consent, I confirmed that the tenant's application has been set for hearing in November 2020. The tenant acknowledges he has not served the landlord with his Notice of Dispute Resolution Proceedings subsequent to filing it. The file number for the tenant's application is noted on the cover page of this decision.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- 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 interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

it would be unreasonable, or unfair to the landlord, the tenant 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*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).*

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

Although the landlord testified that the tenant 'is a drug dealer' and 'threatens' others in the building, the landlord did not provide the evidence to me that would make me come to the same conclusion. I was not told of any specific incidents where the tenant was seen selling drugs, nor did the landlord call any witnesses

to provide first hand testimony that they were threatened or harassed by the tenant. I find insufficient evidence of the tenant **committing** any breaches of the Act, regulations or tenancy agreement.

Second, the landlord acknowledged that nobody has been physically harmed by the tenant or any of his guests. Once again, ending a tenancy by seeking an early end to tenancy under section 56 of the Act is an extraordinary measure, reserved for the most serious breaches of the Act where there is an **imminent** danger to the health, safety or security of another tenant or the landlord. I find the landlord has provided insufficient evidence to establish that this is the case.

The tenant has filed an Application for Dispute Resolution Proceedings to dispute the One Month Notice to End Tenancy for Cause that was served upon him on August 23rd. Under the circumstances, I find it would be reasonable for the landlord to file an application seeking to end the tenancy based on that notice. I find the landlord has not satisfied the second part of section 56 which requires that it would be unreasonable, or unfair to the landlord, the tenant 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.

The landlord's application for an early end to tenancy pursuant to section 56 is dismissed without leave to reapply.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed without leave to reapply.

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 22, 2020

Residential Tenancy Branch