



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET and FFL

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 BB attended for both landlords (“the landlord”). The landlord 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 and materials were personally served individually on the tenants on October 27 and 28, 2020; a completed document Proof of Service in the RTB form was filed. The landlord called the witness BB, an occupant of the building, to provide affirmed testimony.

Further to the landlord’s testimony and submitted documents, I find the landlord served the tenants on October 28, 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 thirty 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 relief requested?

Background and Evidence

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

The parties entered into a month-to-month tenancy agreement effective December 2019; the landlord submitted a copy of the agreement. The monthly rent is \$1,200.00 payable on the first of the month. The tenant provided a security deposit of \$600.00 which the landlord holds.

The landlord explained the unit is a building with 239 other units. The landlord submitted considerable oral testimony and supporting documentary evidence. Not all this evidence is reproduced or discussed here.

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

1. The tenants are suspected drug dealers and there is multiple traffic "day and night" into the unit; the traffic increased over time;
2. The occupants to the building have complained about noise and constant coming and going of vehicles and people;
3. There have been 17 police visits to the unit since May 2020;
4. The occupants and visitors of the unit started "shooting up" in the alley in spring 2020; that is, they used intravenous drugs leaving drug paraphernalia behind on the ground including needles and bags;
5. The landlord is concerned about the abandoned needles as they are not collected and may not be visible in the snow;
6. The needles are a danger to other occupants of the building and to passers-by;
7. On May 15, 2020, the landlord warned the tenants in writing, a copy of the letter being submitted, about personally observing visitors to the unit stumbling out of the unit and "shooting up" in the alley; the landlord stated the tenants would be evicted if the traffic to and from the unit and the incidents of drug use did not stop;
8. The behaviour of the tenants did not stop and instead escalated.

The landlord submitted an extensive evidentiary package including photographs of discarded needles and police report numbers contained in another warning letter of July 18, 2020 to the tenants, a copy of which was submitted.

The tenant called the witness BB, an occupant of the building, who provided affirmed testimony that discarded needles are a problem outside the building and the origin is the tenant and visitors to their unit; the witness BB testified she is afraid of the tenants.

The landlord testified there is serious potential for injury from discarded needles which she fears will continue if the tenant is in possession of the unit. 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) because of risk of injury for needles partially or wholly buried in snow.

The landlord requested an Order of Possession 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 documents 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), (ii) (iii) and (iv) C that is:

1. *the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
2. *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
3. *put the landlord's property at significant risk;*
4. *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*

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 and witness evidence. I have given significant weight to the evidence of the landlord. The landlord was believable in describing the actions of the tenant, the justifiable suspicion of drug dealing, the discarded needles in an area used by other building occupants and the public, and her reasonable fear of injury to others from the needles.

Considering the testimony and evidence, I accordingly find that the landlord has met the burden of proof with respects to the first three listed issues relied upon and for which credible, sufficient evidence was submitted.

I find that the landlord provided enough 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. As the landlord has been successful in this matter, the landlord is authorized to deduct the filing fee of \$100.00 from the security deposit.

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: November 13, 2020

Residential Tenancy Branch