



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, 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 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 and evidentiary package was served on the tenant on October 16, 2020 by posting to the tenant's door thereby effecting service three days later pursuant to section 90, that is, on October 19, 2020. The landlord submitted a signed and witnessed Proof of Witness form in the RTB form in support of service.

Further to the landlord's testimony and evidence, I find the landlord served the tenant on October 19, 2020 pursuant to the provisions of the *Act*.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional eleven 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.

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 January 1, 2020. The monthly rent is \$1,900.00 payable on the first of the month. The tenant provided a security deposit of \$950.00 which the landlord holds.

The landlord testified that a shooting of firearms occurred in the unit on September 26, 2020. A second gun shooting occurred on October 8, 2020. Both incidents involved the attendance of many police officers.

The landlord testified the shootings were widely covered in the media. The landlord testified she is afraid for personal injury for herself and neighbours.

The landlord testified she fears the discharge of firearms and threat of injury will continue if the tenant remains in possession.

The landlord relied upon the following grounds in the request for an Order of Possession for an Early End of Tenancy as set out in section 56:

The tenant has:

56 (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;*

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.

An application for an early end to tenancy is an exceptional measure. 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").

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 wellbeing 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.

These reasons are based on Section 56 which states as follows:

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) and (iii) 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;*

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 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 two shooting incidents at the unit involving the tenant. I find that the testimony of the landlord supported by the witness statements shows that there have been two shootings in the unit and police attendance at the unit. Her description of her anxiety and distress are reasonable and reflective of the situation described.

I find that the landlord has provided sufficient evidence to show that the tenant has *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*

Considering the testimony and evidence, I accordingly find that the landlord has met the burden of proof with respects to the first two listed reasons 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 discharge of firearms in 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.

I caution the landlord to take all reasonable care to protect their safety. I advise the landlord to seek the protection and services of the police and to consult RTB about safety and procedural 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 08, 2020

Residential Tenancy Branch