



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 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;
- Reimbursement of the filing fee pursuant to section 72.

The agent RB attended for the landlord. The tenant LM attended for both tenants (“the tenant”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The parties entered into a 1-year fixed term tenancy which became a month-to-month tenancy at the expiration of the term. The landlord submitted a copy of the agreement which indicated a starting date of May 1, 2018; a term of the agreement is that the tenant paid for electricity. The monthly rent is \$820.00 payable on the first of the month. The tenant provided a security deposit of \$400.00 which the landlord holds.

The landlord explained the unit is a basement suite in a building with an occupied upper suite. The unit is electrically heated.

The landlord submitted considerable oral testimony and supporting documentary evidence in a 38-minute hearing. Not all this evidence is reproduced or discussed here.

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

1. The unit is heated by electricity;
2. The tenant is in arrears of payment of BC Hydro in the amount of about \$780.00 as a result of which the supply of electricity to the unit was cut In April 2020;
3. The unit is accordingly cold and unheated, except for some residual heat from the upstairs unit; as a result, one pipe has already frozen, the landlord conducted repairs before the pipe burst, and the landlord believed there is a substantial risk of further freezing and damage to the unit which will effect the upstairs occupant;
4. The tenant diverted electricity from the upstairs occupant without permission;
5. The tenant has conducted themselves in such a manner that the police came to the unit 86 times in one year and by-law enforcement officers came 6 times;
6. As a result of the frequent attendance of officers, the unit was designated a Nuisance Service Call Property by letter of October 20, 2020, a copy of which was submitted;
7. The police and officers have informed the landlord that one reason for the calls is that the tenant is in possible possession of stolen property;
8. The tenant is non-cooperative to an extreme degree with the landlord and others; for example, the tenant owes \$3,371.00 in outstanding rent;
9. The landlord warned the tenant many times that eviction proceedings will commence if the tenant does not have the electricity reinstated and the visits by the police and officers do not stop;
10. The behaviour of the tenant did not stop and instead has escalated;
11. A hearing under a Ten Day Notice to End Tenancy for non-payment of rent is scheduled to be heard by the RTB.

The tenant provided affirmed evidence. The tenant denied all key allegations made by the landlord. While they acknowledged the police and officers came to the unit many times, they asserted their presence was unnecessary and based on frequent, mistaken and malicious reports from a neighbour. They stated the unit is adequately heated by a solar power generator and residual heat from the upstairs tenant. The tenant denied being in arrears of rent.

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 parties' 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) and (iii), that is:

the tenant has:

*significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and
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 matter of fact, forthright, and credible evidence. I have given significant weight to the evidence of the landlord which I found professional and direct. The landlord was believable in describing the actions of the tenant, the failure of the

tenant to arrange for the supply of electricity to adequately heat the unit during winter, the resultant risk of the pipes freezing and bursting, and the suspicion of criminal behaviour resulting in many visits in a one-year period by officers of the law.

I accept the landlord's testimony that one water pipe has frozen so far this winter, and the risk is high that, without heat, further water pipes carrying water within the building will freeze.

The tenant blamed the landlord for the failure to have electricity in the face of evidence the tenant owed substantial arrears and was required under the tenancy agreement to pay for electricity to the unit. The tenant acknowledged attendance at the unit by enforcement and police officers but denied any responsibility and claimed no accountability for any causative actions.

I find the tenant's general denial of responsibility to be lacking in credibility. I find the disavowal to be unbelievable in the view of the landlord's evidence supported by the letter from the municipality designative the unit as a Nuisance Service Call Property. I do not give much if any weight to the tenant's testimony. I prefer the landlord's version of events which is well supported by documentary evidence. Where their testimony conflicts, I prefer the landlord's evidence as the more believable.

I find the landlord has also established significant disturbance to the landlord and the upstairs occupant by the divergence of power, the failure to obtain and pay for power as required under the tenancy agreement, the freezing of a water pipe caused by the lack of heat in the unit, and the ongoing frequent attendance of police and officers.

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 pipes freezing as winter progresses with substantial resultant damage to the unit.

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

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.

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: December 08, 2020

Residential Tenancy Branch