



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

An early termination of a 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 being served with the landlord's Notice of Expedited Hearing, however she testified she was unable to view the evidence contained on the landlord's USB stick. The tenant also went to the library to try and view the evidence and was unsuccessful. The tenant testified she tried to tell the landlord that she couldn't access the evidence however the landlord refused to respond to her. The only evidence the tenant has is the 'detailed evidence description', a list of the digital evidence, not the video or photographic evidence itself.

The landlord testified that she confirmed with the tenant that she could access a data CD and USB prior to February 8th, the date she obtained the Notice of Expedited Hearing from the Residential Tenancy Branch. The landlord then gave conflicting testimony saying the tenant verbally told her she could access the material after being served with the USB. The landlord further testified that she received the tenant's texts that the tenant couldn't access the data on the USB stick but on police advice, the landlord did not provide a response to the tenant.

Preliminary Issue – landlord's evidence

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure states:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The landlord gave confusing and contradictory evidence regarding whether the landlord confirmed the tenant could access the data on the USB stick or the CD. Despite this, the landlord clearly stated she received the tenant's text saying the tenant could not access it and the landlord did not respond because the police told her not to communicate with the tenant. I find the landlord has not confirmed the tenant was able to gain access to the evidence. Accordingly, the digital evidence provided by the landlord with the Application for Dispute Resolution will not be considered.

The landlord's application for an early termination of a tenancy is governed by Rule 10 of the Residential Tenancy Branch Rules of Procedure respecting expedited hearings.

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.

10.3 Serving the notice of dispute resolution proceeding package

The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with the evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2.

Much of the evidence supplied by the landlord for this hearing was uploaded after February 8, 2020 when the Notice of Dispute Resolution Proceedings was emailed to the landlord by the Residential Tenancy Branch to serve upon the tenant. None of this evidence was submitted in accordance with Rule 10.2 (evidence submitted with the Application for Dispute Resolution) and will therefore not be considered in this decision.

The landlord's digital evidence submitted with the Application for Dispute Resolution will not be considered since the landlord did not confirm the tenant was able to access it. The landlord's evidence supplied to the Residential Tenancy Branch after February 8th will likewise not be considered because it was not provided in accordance with Rule

10.2. As such, only the oral testimony of both the landlord and the tenant will be considered as evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to an early termination of a tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, the parties advised me that the landlord has served the tenant with three separate notices to end tenancy. One is for cause, and two are for unpaid rent. A hearing date of March 22nd has been set for the three disputes to the notices filed by the tenant. The dispute file numbers are recorded on the cover page of this decision.

The landlord gave the following testimony. The month to month tenancy began in September, 2019. Rent was set at \$1,300.00 payable on the first day of the month. A security deposit of \$650.00 was taken which the landlord continues to hold.

Since serving the tenant with a notice to end tenancy, the tenant has been harassing her daughter and her mother in law. On January 9th, the tenant came to her front door, banging it. The tenant aggressively harassed her mother in law. The landlord's 15 year old daughter was threatened with a "smack to the face" by the tenant because of the eviction notice. The tenant went around banging doors and she saw the mother in law in the laundry room. The tenant continued to bang on doors and walls. The landlord's window was broken during the tenant's banging. The tenant's daughter opened the door and the tenant threatened to make the landlord's life "hell" and the tenant told the daughter she would beat her up. The police were called, and the landlord was told not to engage in any further interactions with the tenant.

The tenant's daughter, HM was called. HM testified that on February 1st, the tenant pulled into the driveway, saw the witness's 12 and 15 year old brothers and the tenant threatened to "smack the smiles off their faces". There are photos of bloody handprints on the tenant's door from an incident where the tenant's children's uncle tried to break into the rental unit. Other incidents include the tenant screaming aggressively on January 30th, and the tenant swearing and pounding while the witness was working out on February 4th. The tenant threatened to pour boiling water on the witness.

The tenant gave the following testimony. On the day in question, the landlord shut off all the tenant's power and hot water. The tenant knocked on the landlord's door asking them to turn on the hot water and the power. At the time, the tenant was in the middle of bathing her child and cooking dinner. The landlords frequently shut off her power and hot water.

The tenant denies breaking the landlord's window. If she did, the landlord needs to take a video and go to the police. The landlord's accusation that the tenant yelled at her daughter and son is untrue. The tenant has dashcam evidence of this, however the tenant is unable to provide it due to not being able to afford to purchase a USB stick.

The tenant argues the landlord is trying to evict her due to a water leak on December 20th, resulting in water leaking in the basement unit. The landlord needs to do renovations and there were never issues between the parties before December 20th.

The handprint on the door is from an unknown person who attacked her houseguest, the uncle of her children. There is an ongoing investigation to determine who the unknown person is.

The landlord rebuts the tenant's testimony, stating it's impossible to shut off the tenant's hot water without shutting it off for the entire house. The tenant has had another child and her boyfriend living with her, bringing the number of tenants up, using more hot water.

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).*

I find the landlord has not provided sufficient evidence to satisfy me there is a serious threat to the landlord or her family's health, safety or security. According to the landlord's testimony, the majority of the incidents appear to revolve around the tenant's displeasure with being served with a notice to end tenancy. I heard evidence of the tenant yelling, banging on doors and making idle threats, none of which I take seriously as there is insufficient evidence of the tenant ever following through with the threats. I am not satisfied there is an imminent danger to the health, safety, or security of a landlord or tenant that would cause me to end the tenancy pursuant to section 56 of the Act.

The landlord has served the tenant with a One Month Notice to End Tenancy for Cause which was disputed by the tenant. A hearing date of March 22nd has been set to hear this dispute.

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. I have already found the landlord has not provided sufficient evidence to satisfy me there is an imminent threat of harm or danger from this tenant. Under the circumstances, I find it would be reasonable for the landlord to wait to have the merits of her One Month Notice to End Tenancy for Cause heard on March 22nd. As such, the landlord's application for an early end to the 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 landlord's application for an early end to the tenancy pursuant to section 56 is dismissed without leave to reapply. This tenancy shall continue until it ends in accordance with the Act.

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: February 27, 2021

Residential Tenancy Branch