



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This expedited 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 of \$100.00 pursuant to section 72.

The landlord KS attended the hearing with his son and agent AS (“the landlord”) and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The tenants did not attend the hearing (“the tenant”). I kept the teleconference line open from the scheduled time for the hearing for an additional 22 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.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. They testified the hearing was not recorded.

The landlord testified they served the tenant with the Notice of Expedited Hearing and Application for Dispute Resolution by posting copies for each of the tenants to the tenant's door of the unit on April 23, 2021. The landlord submitted photographs of the envelopes and the street number of the unit on the door. As well, they gave copies to

the tenants CS and JM who came to the door when the landlord knocked. The agent AS provided affirmed testimony that he personally posted and served the documents. A completed RTB Proof of Service form was submitted.

In consideration of the undisputed testimony of the landlord and the documentary evidence, I find the landlord served all the tenants on April 26, 2020 in compliance with the Act.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing. The tenancy began on October 1, 2020. Rent is \$2,900.00 payable on the first of the month. The tenant provided a security deposit of \$1,450.00 which the landlord holds. The tenant has not paid rent for the months of February, March, April and May 2021.

The landlord submitted a copy of the agreement which is in the standard RTB form. The agreement was between the landlord and the tenant DR; the remainder of the tenants are believed by the landlord to be occupying the unit as well.

The landlord explained the unit is in a single-family dwelling.

The landlord submitted considerable oral testimony as well as supporting documents and videos. Not all this evidence is reproduced or discussed here.

The key points are as follows:

1. On February 12, 2021, the landlord issued and served a 10 Day Notice to Vacate for Nonpayment of Rent;

2. On April 8, 2021, the tenant caused a fire to the garage building which is part of the rented unit causing considerable damage; fire responders attended to extinguish the fire;
3. On April 19, 2021, the police raided the unit with a search warrant, a copy of which was submitted, seized drugs and weapons, and shots were fired;
4. The police file number was submitted;
5. In mid-April, 2021, the son and agent of the landlord who attended at the hearing, AS, went to the unit to collect rent; the tenant told AS that he, the tenant, would shoot AS if he came again;
6. On April 22, 2021, the landlord received a Notice of Expedited Hearing from the RTB with today's date;
7. The landlord served the documents as referenced earlier;
8. On May 3, 2021, the tenant caused a fire to the unit; fire responders attended to extinguish the fire but there was substantial damage to the unit;
9. The unit is uninhabitable from damages including bullet holes to the windows and doors;
10. The landlord submitted many pictures of the condition of the unit and the damage caused by the tenant illustrating the chaos of heaped items, garbage, furniture and debris as well;
11. The landlord requested an emergency Order of Possession because of these facts as stated;
12. The landlord is afraid of being assaulted by the tenant and of greater damage to the unit.

The landlord requested an Order of Possession based on section 56 of the Act as follows, relying primarily on section 56(2)(a)(i), (ii) and (iii):

Application for order ending tenancy early

Section 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 stated that it was unreasonable or unfair to the landlord and the other occupants to wait for a One Month's Notice to take effect under section 47 (landlord's notice).

The landlord requested an Order of Possession effective immediately.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the 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, referenced above, provides as follows [emphasis added]:

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Section 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's evidence related primarily to 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 well supported by documentary evidence. I have given significant weight to the evidence of the landlord which I found professional and direct. I find the landlord's description of the police raid to be believable. I find the landlord's description of the two fires and the damage to the unit to also be credible. The landlord was plausible in describing the actions of the tenant in threatening AS, the landlord's son. I find their fear of a risk of weapons being in the possession of the tenant in the unit, and the risk of greater harm to the property, to be well-founded in the circumstance.

I accept the landlord's testimony as reasonable and reliable. I find the landlord has established significant disturbance to the landlord and serious risk by the facts to which the landlord testified.

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 continuation of significant disturbance and damage.

In consideration of the evidence, the Act and Guideline, on a balance of probabilities and for the reasons stated above, I find that the landlord's application meets the burden of proof and satisfied all requirements under 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 application, the landlord may deduct the filing fee of \$100.00 from the security deposit held by the landlord.

I cautioned the landlord during the hearing 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 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: May 07, 2021

Residential Tenancy Branch