



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.

The landlord's property manager EW attended as well as the agent CL who was also an employee of the landlord ("the landlord"). The landlord had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 20 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 provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on

June 3, 2020 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on June 8, 2020.

The landlord provided a copy of the receipt and the Canada Post Tracking Number in support of service. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on June 8, 2020..

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 agent CL affirmed the veracity and accuracy of the agent EW's testimony.

The monthly tenancy began on January 10, 2020. Rent is \$375.00 payable on the first of the month.

The landlord submitted a copy of the agreement which is in the standard RTB form.

The landlord submitted considerable oral testimony as well as supporting documents and a video.

The landlord's submitted Application included the following description of events which took place on March 20, 2021:

[The tenant] assaulted a man by hitting him in the head with a pipe several times while another man (name) held the man for [the tenant]. The victim had to receive medical care at the hospital. Police were called for this assault with a weapon. [police report number]. There was zero provocation for this incident as the man was simply walking up and down the hall, minding his own business before he got assaulted with a weapon.

The landlord submitted a copy of a video of the incident which took place on the sixth floor of the building and was captured on the landlord's surveillance camera.

Both agents at the hearing confirmed that the incident of assault by the tenant took place and the facts are correct as related at the hearing.

After the assault, the landlord issued a One Month Notice to End Tenancy for Cause ("Notice") dated March 23, 2021. The Notice was served on the tenant by registered mail sent on March 23, 2021 and deemed received under section 90 five days later, that is, on March 28, 2021. The landlord submitted a copy of the receipt for the mailing along with the tracking numbers.

The landlord submitted a copy of the Notice which is in the standard RTB form and claims that the tenant "seriously jeopardized the health or safety or lawful right of another occupant or the landlord". The landlord testified that the tenant did not dispute the Notice.

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

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 he, along with other tenants in the building, are afraid of the tenant and that it was unreasonable or unfair to the landlord and the other occupants to wait for the One Month's Notice to take effect under section 47 (landlord's notice). The landlord testified that the victim of the assault is afraid to testify against the tenant; as a result, the tenant has not been charged.

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]:

Application for order ending tenancy early

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(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), that is:

The tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and*

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 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 victim's injuries and the police attendance to be believable. The landlord was plausible in describing the actions of the tenant and the testimony was supported by a video of the incident. I find the fear of the tenant to be well-founded in the circumstances.

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 risk of significant disturbance and personal injury.

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.

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: June 22, 2021

Residential Tenancy Branch