



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

This expedited hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56.

The landlord attended and had opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 15 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.

As the tenant did not attend the hearing, the issue of service was addressed.

The landlord testified they served the tenant with the Notice of Hearing and Application for Dispute Resolution by posting to the tenant's door of the unit on June 11, 2021.

The landlord provided a witnessed Proof of Service of Expedited Hearing in the RTB form. The landlord also provided a photograph of the landlord posting the documents to the door of the unit.

The landlord testified that he had a conversation with an occupant of the unit, LT, the day of the posting during which LT acknowledged the posting as testified by the landlord.

The Director's Order of June 26, 2019 states that a party to an application for dispute resolution set down under Rule 10 of the Rules of Procedure for an expedited hearing date that is between 12 and 16 days after the date the application is made must serve their material as set out in paragraph 2 of the Order.

Paragraph 2(b) states that the party may attach a copy to a door or other conspicuous place at the address at which the person resides; pursuant to section 90, service is deemed effective three days after service, that is, on June 14, 2020.

This application is an application under Rule 10 as it is an application for an expedited hearing to be heard on short notice to the Respondent.

Further to Rule 10, section 2(b) of the Order of June 26, 2019 and in consideration of the undisputed testimony of the landlord and supporting documents, I find the landlord served the tenant on June 14, 2020 with the Notice of Hearing and Application for Dispute Resolution in compliance with the Act.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing.

The landlord submitted a copy of the agreement with the tenant. He testified as follows with respect to the tenancy background:

Information	Details
Type of building in which unit is located	Single family residence Landlord lives upstairs, unit is downstairs
Type of tenancy	Monthly
Monthly rent payable on first	\$1,300.00
Security deposit held by landlord	\$650.00
Pet deposit	None

The landlord lives above the unit with his family including a young child.

The landlord explained that he purchased the building in October 2020. Since that time, he observed that the tenant yelled and screamed at the female occupant while intoxicated on several occasions. The landlord observed that the tenant drank excessively, “starting in the morning”. Warnings to the tenant were unheeded.

The landlord requested that the tenancy end immediately on an emergency basis because of actions of the tenant which purportedly took place on May 25, 2021.

On May 25, 2021, the landlord testified that the police were called to the unit following a physical assault by the tenant on the female occupant who was “covered in blood” when the landlord arrived at the unit. The landlord’s child witnessed the victim in the aftermath.

The landlord submitted evidence concerning the police investigation as well as a copy of the court registry showing the tenant has been charged with assault. The landlord submitted a video of the hurt victim. The landlord testified that the female occupant has informed her that a court order regarding contact has been issued against the tenant.

The landlord stated that he and his family are afraid of the tenant and concerned about their safety and find the tenant’s actions upsetting and disruptive. The landlord is worried that the tenant will continue his assaultive behaviour.

The landlord requested an immediate end to the tenancy and an order of possession.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the 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.

Section 56(1) of the Act permits a landlord to 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 of notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section states:

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.*

Expedited hearings are for serious matters and are scheduled on short timelines and on short notice to the respondent.

Policy Guideline 51 – Expedited Hearings provides guidance on applications of this nature. The Guideline states that the expedited hearing procedure is for 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.

The Guideline states in part as follows:

Ordinarily, the soonest an application for dispute resolution can be scheduled for a hearing is 22 days after the application is made. This helps ensure a fair process by giving the respondent ample time to review the applicant's case and to respond to it. However, 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.

...

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).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;*
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;*
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or*
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.*

To grant an Order of Possession under section 56(1), I must be satisfied as follows:

56 (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.

(emphasis added in bold)

The landlord relied on sections (a)(i) and (ii). That is, the tenant had:

- (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;*

In this case, the landlord relied on the tenant's assault of LT, an occupant, which has resulted in a police investigation and criminal charges. The landlord testified that his family was upset by the tenant's yelling and screaming in the months leading up to the incident and in seeing the bloodied victim.

I find the landlord provided credible testimony and evidence. I find the landlord has established that the events happened in the manner to which they testified. I find the landlord's account of what took place to be reliable and believable.

I find the landlord has shown that there is a reasonable risk of danger or harm to the occupant LT and a risk of ongoing distress to the landlord and family.

In summary, in considering the evidence and submissions, I find the landlord has met the burden of proof with respect to both of these sections.

I also find the landlord has met the burden of proof with respect to the second part of the test, as follows:

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.

I find the landlord has established that it is unreasonable or unfair to wait for the landlord to issue a One Month Notice to End Tenancy for Cause in view of the violence exhibited by the tenant, the pattern of disruptive behavior over many months, and the escalating nature of his unacceptable conduct.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order 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: June 29, 2021

Residential Tenancy Branch