



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Kettle Society
and [tenant name suppressed to protect privacy]

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 DM ("the landlord") and the tenant attended. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. No issues of service were raised. I find the landlord served the tenant in accordance with the Act.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order. The parties discussed settlement, but no resolution was reached. The hearing accordingly proceeded and lasted 40 minutes.

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 stated the tenancy began July 1, 2020. Monthly rent is \$420.00, and the security deposit was \$187.50 which is held by the landlord.

The landlord's submitted Application included the following description of events which took place on May 12, 2021:

Per the [municipality] Fire and Rescue Services Incident Report it was determined by the fire investigator that the tenant purposefully started a fire in the bathroom in unit (# of unit). This caused damage from fire and flood from the subsequent engagement of the building's fire safety systems. The tenant has not acknowledged responsibility for this incident. [The building in which unit is located] is a 139 unit 16 storey apartment building and there are safety concerns about the risk of another similar incident involving fire.

The landlord submitted an Incident Report from the Municipal Fire and Rescue Services, Staff Incident Reports, Worksafe Investigation Report and photos of the fire debris and aftermath in support of testimony.

After the incident, the landlord issued a One Month Notice to End Tenancy for Cause ("Notice") dated June 30, 2021. The Notice was served on the tenant by registered mail sent on that day and deemed received under section 90 five days later, that is, on May 5, 2021. The landlord submitted the tracking number in support of service. The tenant acknowledged receipt of the One Month Notice.

The landlord submitted a copy of the Notice which is in the standard RTB form and claims that the tenant:

- (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;*

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 the tenant started fires on the floor and in the bathtub on May 12, 2021. The tenant acknowledged setting the fires but stated that he did so “accidentally”. He said that when the sprinkler system was activated, he vacated the building, leaving the bathtub running which overflowed causing water damage.

The landlord stated that the tenant has received 5 warning letters previously about other incidents. The tenant acknowledged receipt of 3 previous warning letters.

The landlord stated that tenant’s fires were responsible for considerable damage to a recently constructed building, including other units on the tenant’s floor.

the landlord is concerned the tenant will start other fires. The landlord testified that they have repeatedly warned the tenant about his behaviour and the tenant has not complied.

The landlord stated that in view of the possible damage to property and other occupants, it is 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 requested an Order of Possession effective immediately.

The tenant stated he has no other accommodation and asked that the tenancy continue.

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

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)(ii) and (iii), that is, the tenant has:

- (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;*

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 May 12, 2021 incident involving fires started by the tenant in his unit and the fire department attendance to be believable and well documented. I find the landlord has issued 5 previous warnings in writing to the tenant. I find the fear of the tenant causing damage to persons and property to be well-founded in the circumstances.

I accept the landlord's testimony as reasonable and reliable. I find the landlord has established all three of the grounds claimed.

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.

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: July 09, 2021

Residential Tenancy Branch