



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Schell Motel
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;
- Reimbursement of the filing fee pursuant to section 72.

The landlord's agent MB ("the landlord") and the tenants ("the tenant") attended. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

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 65 minutes.

Preliminary Issue – Service of landlord's materials

The tenants acknowledged receipt of the landlord's Application for Dispute Resolution and evidence package.

However, the landlord submitted video evidence ten days before the hearing which he acknowledged was not served upon the tenant. The Act requires that the landlord do

the following:

1. Complete and serve the Digital Evidence Details (form RTB-43).
2. Provide the Digital Evidence Details and digital evidence to the other party and the RTB.
3. Make sure that both the other party and the RTB can view/hear the digital evidence.
4. Meet all deadlines for service and submission of evidence

As the landlord did not serve the video evidence in compliance with the Act, I do not consider the video evidence in my Decision.

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.

No copy of the tenancy agreement was submitted. The parties agreed the tenancy began Jan 19, 2021. Monthly rent is \$1,620.00. The unit is a self-contained living area in a motel which rents by the day and the month.

The landlord's submitted Application included the following description of events which led up to this application:

Room condition is appalling. Unit will require \$1500-2000 worth of repair to walls, carpet, cleaning, paint, etc. Tenant is mentally ill and is a risk to other guests at the motel. Constantly not wearing clothing in plain view of guests and their children. Video evidence of tenant exposing herself to the owner and his daughter as well as the manager in a non-provoked manner. Video evidence of the room condition and the destruction within. Deplorable state outside room/parking.

The landlord testified that recent inspection has revealed that the unit contains considerable garbage, personal possession, tools and recyclables/garbage. The latter is flammable and is stored on the functioning burners of the stove. The tenants agreed

that they store items there but said they regularly take out the recyclables and the burners do not work. They denied there was risk of fire.

The landlord testified that the female tenant recently exposed herself thus showing her genitalia to the manager and his daughter. The female tenant acknowledged that she was only wearing a long t-shirt and that she did lift it in their presence. The landlord described the incident as completely inappropriate and showed that the female tenant was not well. The female tenant the incident was as serious as the landlord said and that she only lifted her clothing quickly, "like this".

The landlord testified that the balcony of the pool overlooks the swimming pool, and the female tenant appears there naked while families are using the pool. The families, many with children, object to the behaviour. The female tenant denied these allegations.

The landlord stated that the unit has been damaged by the male tenant who hangs tools on the wall. The male tenant acknowledged that he has stored tools in the unit but denied damaging the walls.

The landlord testified that the tenant keeps a car in the parking space for the unit which is filled with junk and garbage. The male tenant acknowledged that the car, including the driver's area, has many of his personal possessions mounded up in the interior but denied it is junk or garbage.

A One Month Notice to End Tenancy for Cause ("Notice") has not been issued.

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 he receives frequent complaints from other occupants about the tenant's behaviour and people have left the building rather than continue to stay there, particularly because of the female tenant's naked appearances. They have repeatedly warned the tenant to clean the unit, repair the damage, stop appearing naked to staff and the public, and clean up the unsightly car. Warnings have been ignored.

The landlord is concerned the tenant will start a fire by placing flammable items on the stove. The landlord testified that they have repeatedly warned the tenant about his behaviour and the tenant has not complied. During the hearing, the tenant dismissed the risk of fire as unlikely.

The landlord testified they are concerned the female tenant will continue to expose herself by appearing naked on the balcony of the unit, visible to other guests. During the hearing, as stated, the female tenant denied this ever happened.

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 they have 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) and (iii), that is, the tenant has:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

...

(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 testimony. The veracity of the landlord's testimony was acknowledged by the tenant with respect to the storage of items on top of the stove and the exposure of genitalia by the female tenant to the manager and his daughter. I have given significant weight to the evidence of the landlord. Where the evidence of the party conflicts, I prefer the landlord's version.

I find the tenant minimized the risk to the landlord of fire and appeared indifferent to the possibility of fire. They defended their practices.

I find that the routine storage of some flammable items on the stove, acknowledged by the tenant, to amount to putting the landlord's property at significant risk.

I find the landlord's description of the female tenant's deliberate exposure of her genitalia to the manager and his daughter, acknowledged by the tenant, to amount to unreasonable disturbance.

I find the tenant minimized the unreasonable disturbance to the landlord of exposure of her genitalia to staff and a child. They appeared undisturbed by the reaction to the event and referred to it as though it were humorous and not serious.

As stated, I accept the landlord's testimony as reasonable and reliable. I find the landlord has established both 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 risk of unsafe storage of some flammable items continuing.

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: August 25, 2021

Residential Tenancy Branch