



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The hearing began at 11:00 a.m. and ended at 12:25 p.m. This hearing lasted approximately 85 minutes.

The landlord's agent confirmed that he had permission to represent the landlord, who is his mother, named in this application. He stated that the landlord owns the rental unit. "Witness AS" testified on behalf of the landlord and was excluded from the outset of the hearing and returned later to testify. Both parties had an equal opportunity to question the witness. Witness AS stated that he is the son of the landlord and the brother of the landlord's agent.

At the outset of this hearing, I informed both parties that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. The landlord's agent and the tenant both affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. Both parties had an opportunity to ask questions. Neither party made any accommodation requests.

Both parties initially agreed that the tenant would vacate the rental unit on September 30, 2021. The tenant then revoked his agreement and stated that he would dispute it “5 minutes after the hearing is over.” The tenant then confirmed that he did not want to settle. I cautioned the tenant that his tenancy could end within two days, since the landlord applied for an early end to tenancy and the landlord’s agent confirmed he was seeking an immediate order of possession. The tenant affirmed that he wanted to proceed with the hearing, and he wanted me to issue a decision regarding this application.

Service of Documents

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on July 15, 2021 and a notice of hearing was issued by the RTB on July 30, 2021. The landlord was required to serve that notice, the application, and all other required evidence in one package to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord’s agent testified that he served the tenant with the landlord’s application for dispute resolution hearing package on July 31, 2021, by way of posting to the tenant’s rental property door. The landlord provided a signed, witnessed proof of service to confirm same.

The tenant confirmed receipt of the landlord’s application for dispute resolution hearing package. The tenant said that the landlord’s application was posted to the main door at the rental property, not his bedroom door. The tenant stated that his roommate pulled the landlord’s application off the door and handed it to the tenant on August 11, 2021. The tenant claimed that he spoke to the RTB on August 12, 2021, half an hour prior to this hearing. The tenant explained that he does not stay at the rental property, but he only has his belongings there.

Section 89(2)(d) of the *Act* permits service of an application pursuant to section 56 of the *Act* according to the following method (my emphasis added):

*89(2)(d) by attaching a copy to a **door or other conspicuous place at the address at which the tenant resides;***

In accordance with sections 89 and 90 of the *Act* and in compliance with the deadlines in RTB *Rule* 10, I find that the tenant was deemed served with the landlord's application on August 3, 2021, three days after its posting.

I find that the landlord was not required to post the application to the tenant's bedroom door. I find that the landlord properly posted the application on the main door, which is a conspicuous place at which the tenant resides. The rental unit address is listed as the main address on the cover page of this decision.

The tenant did not indicate that he provided an alternate address for service to the landlord. Therefore, the tenant is required to check the rental property door and his mail, or have an agent do so on his behalf, if he is unavailable or away from the rental unit. The tenant's roommate checked the main door and handed the landlord's application to the tenant.

Preliminary Issue – Adjournment of Hearing

The tenant did not formally request an adjournment of the hearing. He asked that the hearing be postponed for a month because he did not have enough time to prepare or submit evidence.

The landlord's agent stated that this was an urgent matter and he wanted an immediate order of possession against the tenant. He said that he feared for his own safety and that of the landlord, the landlord's agents, and other occupants at the rental property.

I did not grant an adjournment of the tenant's application. I made this decision after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

As noted above, I found that the tenant was deemed served with the landlord's application on August 3, 2021. Therefore, the tenant had 9 days from August 3, 2021 to August 12, 2021, the date of this hearing, to submit evidence and prepare for the hearing.

Further, the tenant had a full opportunity to present his testimony and submissions, and to question the landlord's agent and witness AS during this lengthy 85-minute hearing. I find that a further delay in this hearing date would prejudice the landlord, who was ready to proceed and noted serious safety concerns relating to the tenant and the rental unit.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing
Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout this hearing, the tenant was angry, upset and argumentative. The tenant repeatedly yelled at me, interrupted me, and made inappropriate comments towards me. The tenant also interrupted the landlord's agent and witness AS and made inappropriate comments towards them. I was required to mute the tenant's telephone line multiple times, due to the background noise and the tenant's repeated interruptions and arguments during this hearing, while others were speaking. I was unable to hear the landlord's agent and witness AS speak many times because the tenant repeatedly interrupted them and yelled while they were speaking.

When the tenant first called into the hearing, I confirmed he was on the line. I informed him that I could not hear him properly, since it was noisy, and he said: "you're lucky I'm here, you're fortunate I called in." When I asked if the tenant could minimize the background noise on his telephone line, he stated that he was at the skateboard park and he moved to the side. When I notified the tenant that this was a serious hearing and his tenancy could end early, he said "congratulations!"

I repeatedly cautioned the tenant about his behaviour and notified him that he could be excluded from the hearing if he continued with his inappropriate behaviour. I informed him that I could make a decision in his absence, which could result in an early end to his tenancy and an order of possession. The tenant continued yelling at me, interrupting me, and making inappropriate comments towards me. However, I allowed the tenant to attend the full hearing, despite his inappropriate behaviour, in order to allow him to present his evidence and respond to the landlord's application. This hearing lasted 85 minutes because of the tenant's repeated arguments and inappropriate behaviour.

I caution the tenant to not engage in the same inappropriate behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and he may be excluded from future hearings. In that case, a decision will be made in the absence of the tenant.

Issues to be Decided

Is the landlord entitled to an early end to tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent stated the following facts. This tenancy began on June 15, 2020. Monthly rent in the amount of \$700.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord's agent testified regarding the following facts. The tenant committed an assault in front of the landlord on June 30, 2021. The tenant headbutted another occupant B ("occupant"), who is the landlord's assistant, in front of the landlord, the landlord's agent, witness AS, and other occupants at the rental property. The landlord is 50 years old and was standing right beside the tenant. The landlord's agent tried to calm the tenant down. The landlord's agent took out his phone and started filming the tenant on video. The tenant fled the scene, while the landlord's agent called the police. 10 to 15 police cars showed up looking for the tenant, the tenant was arrested, he spent

one day in jail, then he was released and did not show up to his hearing, so a bench warrant was issued against him. The tenant has a no contact order with the occupant until this matter is resolved. The landlord's agent did not hear the occupant threaten the tenant. The tenant was wearing a purple shirt and white khakis on the day of the above incident.

The landlord's agent stated the following facts. The tenant is aggressive and has threatened the landlord's agent for one to two months. The tenant has started fires at the rental property. The tenant assaulted a peace officer with a weapon, there are two bench warrants issued against the tenant on July 15, 2021, and the landlord has provided police file numbers, the police constable's number, and a Court Services Online printout of all the charges against the tenant. The landlord's agent has faced 10 times more difficulty in speaking with the tenant, as in this hearing, since the tenant is verbally and physically abusive. The landlord's agent fears for his life, as he is only 5 feet 6 inches tall and the tenant is 6 feet tall. The landlord's agent has submitted video of the tenant making threats, smoking in his face, spitting at him, trying to throw his furniture aside when it was delivered, and the landlord's agent telling the tenant to calm down and step away. The tenant sits on fire and the tenant sent the landlord's agent videos of him breathing fire, so the tenant may burn the rental property down. The last time the landlord's agent went to the rental property, he called the police for safety, and they offered to escort him in order for him to do business there.

The tenant testified regarding the following facts. The landlord's evidence has nothing to do with this application. The tenant was assaulted and threatened by the occupant for two days. The occupant has a no contact order with the tenant, except the occupant continues to interact with the tenant. The landlord has no video proof of the fire. The tenant moved in on February 13, 2020, at a rent of \$650.00 per month. The tenant's partner has moved out and cannot visit him at the rental unit. The tenant agreed that he headbutted the occupant because he was defending himself from threats made by the occupant to "kill" him and "cut your head off." The tenant walked away himself immediately. The tenant cannot talk about the assault on the police officer charge against him, based on his lawyer's advice. He does not think he started any fires, but he has because he enjoys a "good steak" on a propane barbeque. He did not spit at the landlord's agent because he generally does not do that. He did not threaten the landlord's agent because he does not say something without following up on it. The tenant is a man of "great honour" and there are not a lot of people like him. When he gives his word, he means it. The landlord should not interrupt his quiet enjoyment of the rental unit. The landlord is a "slumlord" and has no right to judge the tenant's character or tell him what to do. There is no power at the rental unit, so the tenant is living

elsewhere but uses the rental unit for storage. The tenant needs at least 3.5 months to find a new place but is planning to move out.

Witness AS testified regarding the following facts. There was an incident on June 30, 2021. Witness AS, the landlord, the landlord's agent, and the occupant were in the common courtyard at the rental property, discussing the cleaning of the courtyard and maintenance. The tenant came out of his residence, which is across the courtyard, and approached from 25 to 30 feet away, on his own, when he was not part of the discussion. Witness AS and the landlord's agent were also there to collect rent from other occupants. It is the tenant's normal behaviour to provoke people. The tenant headbutted the occupant, the occupant's nose was bent and crooked, he was bleeding, and a fracture was caused. Witness AS did not hear the occupant threaten the tenant and he would not laugh at that because it is not logical to laugh at something serious. Witness AS and the landlord's agent tried to de-escalate the situation. The tenant backed off and lingered, as soon as people started to pull out their cell phones to record the incident on video. The landlord, the landlord's agent, witness AS, and other occupants at the rental property witnessed this incident. The landlord screamed when it happened. The tenant told the landlord's agent to get his phone off the tenant. There was an assault, so the landlord waited for the police. The occupant was in shock and pain, but luckily, he did not take matters into his own hands and retaliate against the tenant.

Witness AS stated the following facts. The landlord had to protect the occupant and was worried about the tenant returning. There was no provocation by the landlord, the tenant was looking for a fight, he looked like he wanted to talk to the landlord's agent, so things could have been worse for the landlord's agent. Witness AS feared for the safety of himself, the landlord's agent, and the other occupants in the courtyard. About 10 to 15 police cars came looking for the tenant, and when the tenant saw them through his window in the rental unit, he left. Witness AS gave a statement to the police about the incident. Other occupants at the rental property asked what was going on and why the tenant was committing assault against the occupant. Witness AS shortens his hours and limits accessing the rental property, to avoid interactions with the tenant. The tenant has repeated issues at the rental property and witness AS is concerned about the tenant starting a fire, getting intoxicated, and getting into arguments. The tenant is a threat and his actions and communication show that he is aggressive. Witness AS has observed the tenant and other occupants have told him about the tenant's behaviour. He has not seen the tenant since the above incident occurred. The tenant is about 6 feet tall, and witness AS and the landlord's agent are 5 feet 5 inches tall and 5 feet 6

inches tall. The tenant was wearing a purple shirt and white khaki shorts on the day of the incident.

Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (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...*

I found the landlord's agent and witness AS to be more credible witnesses, as compared to the tenant. They provided their testimony in a calm, candid, consistent and straightforward manner.

Conversely, the tenant provided his testimony in an upset, angry, agitated, and inconsistent manner. The tenant was repeatedly yelling during this hearing, when I asked him questions and while the landlord's agent and witness AS were speaking. The tenant's version of events changed throughout this hearing. The tenant frequently

interrupted the landlord's agent and witness AS during their testimony and made inappropriate comments towards them when he did not like their answers to the tenant's questions. The tenant focussed more on arguing with the landlord's agent and witness AS, than presenting his own testimony and evidence.

On a balance of probabilities and for the reasons stated below, I find that the tenant has significantly interfered with and unreasonably disturbed the landlord, the landlord's agents, and other occupants at the residential property.

I accept the affirmed testimony of the tenant, the landlord's agent, and witness AS, that the tenant headbutted an occupant at the residential property on June 30, 2021. The tenant admitted this during the hearing. I find that the above incident caused physical injuries to the occupant, which was witnessed by the landlord's agent and witness AS. I find that it caused the landlord's agent and witness AS to fear for their personal safety. I find that the landlord's agent and witness AS received multiple complaints of safety concerns from other occupants at the residential property regarding this incident. I accept the affirmed testimony of the landlord's agent and witness AS that many police cars attended at the rental property to respond to the above incident, after the tenant fled the scene.

I accept the affirmed testimony of the landlord's agent and witness AS that the tenant has been aggressive towards them. I accept the affirmed testimony of the landlord's agent that the tenant spit at him. I find that the tenant's pattern of behaviour shows significant interference and unreasonable disturbance towards the landlord, the landlord's agents, and other occupants at the residential property.

I also find that the landlord's application meets the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord provided sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to take effect. I find that the landlord provided sufficient evidence regarding the urgency and seriousness of this situation and the safety risks to the landlord, the landlord's agents, and the other occupants at the residential property.

Accordingly, the landlord's application for an early end to tenancy is allowed. The landlord is granted an order of possession effective two (2) days after service on the tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's application for an early end to tenancy is allowed.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$100.00 from the tenant's security deposit of \$350.00, in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of \$250.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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 12, 2021

Residential Tenancy Branch