Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City of Vancouver 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 agent GM ("the landlord") attended and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, 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 38 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.

Service

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 August 27, 2021 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on September 2, 2021. The landlord also testified they place a copy of the documents in the tenant's mailbox on August 27, 2021, deemed received by the tenant under section 90 three days later.

The landlord provided 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 September 2, 2021.

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 September 2, 2021 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. They testified as follows with respect to the tenancy background:

Information	Details
Type of building in which unit is located	Single residence occupancy
Type of tenancy	Monthly
Date of beginning	October 15, 2018
Monthly rent payable on first	$375.00
Security deposit held by landlord	$187.50
Pet deposit	None

The landlord testified as follows. The tenant is an extreme hoarder. The unit is a 9 on the hoarding scale of 9 with combustible and other items stacked throughout the unit to the ceiling. The tenant was unable to get through the hoarded items to the bathroom and was urinating in bottles. Costs for cleaning the unit have been estimated at $6,000.00. As a result of the storage of combustibles and the risk of fire, on August 12, 2021, the Fire Inspector placed a Do Not Occupy Notice on the unit, a copy of the Notice being submitted, and ordered removal of 75% of combustibles. The tenant has not complied and continued to smoke cigarettes in unit.

The landlord further testified that the tenant is undergoing a serious mental health disintegration resulting in the tenant becoming aggressive with staff. Emergency and medical support for his mental health has been called by the landlord multiple times and the tenant has rejected the assistance. The tenant sees animals in the unit and has used a fire extinguisher on the visions. The tenant sees the staff as “shapeshifting reptiles”.

The landlord submitted copies of many letters of warning from 2019 to July 26, 2021. The landlord testified that all efforts to resolve ongoing problems with the tenant have failed and the tenant’s behaviour is worsening over time.

The landlord requested that the tenancy end immediately on an emergency basis because of the unsafe and unhygienic situation in the unit and the aggressive actions of the tenant.

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 use of the fire extinguisher and threats to staff which amount to significantly interfering and unreasonably disturbing the landlord. The landlord also relied on the tenant's hoarding which included unsafe storage of combustibles, the risk of fire, the violation of the Fire Department order, and refusal to cooperate with removal.

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's testimony was well supported by documentary evidence including photographs.

I find the landlord has shown that there is a reasonable risk of danger or harm to the landlord's staff; the cumulative effect of the hoarding and storage of combustibles is significant interference with and unreasonably disturbance of the landlord. I find the landlord has established that the hoarding, risk of fire, and smoking in the unit amount to seriously jeopardizing the health and safety of the landlord and occupants of the building.

In summary, in considering the evidence and submissions, I find the landlord has met the burden of proof with respect to both 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 and the unhealthy, unhygienic and unsafe conditions in the unit.

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: September 16, 2021

Residential Tenancy Branch