Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MDC Forbes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 28, 2021 (the "Application"). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the "*Act*"). The Landlord also sought reimbursement for the filing fee.

The Agent for the Landlord (the "Agent") appeared at the hearing. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Neither party sought to call witnesses when asked at the outset of the hearing.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. The Tenant confirmed receipt of the hearing package and Landlord's evidence and did not raise any issue with this at the outset of the hearing.

The Tenant confirmed they did not submit evidence for the hearing. The Tenant testified that they tried to submit evidence two days prior to the hearing but because of the timeline, they were locked out from submitting evidence. I asked the Tenant at the outset of the hearing if they were raising an issue with proceeding due to this and the Tenant said they were not.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Preliminary Issue – Evidence

During the hearing, the Tenant testified that they did not receive the June 14, 2021 Request for Compliance. The Agent testified that this was served on the Tenant.

I accept that the June 14, 2021 Request for Compliance was served on the Tenant because the Tenant acknowledged receiving the Landlord's evidence and there would be no reason for the Landlord to leave out this one page. Further, I did not find the Tenant's testimony particularly compelling given the Tenant testified about the RTB website not allowing them to upload evidence due to the timeline before the hearing when this is not something the RTB website does.

I am satisfied based on the evidence provided that the June 14, 2021 Request for Compliance was served on the Tenant and I have considered it.

Preliminary Issue – Adjournment

At the end of the hearing, the Tenant sought an adjournment. The Tenant stated that they did not have enough time to prepare for the hearing or properly defend themselves. The Tenant testified that they received the hearing package and Landlord's evidence November 04, 2021. The Tenant submitted that the Landlord's evidence is quite detailed. The Tenant said they have a lot of witnesses and police reports to obtain, all of which requires time. The Tenant submitted that they could not "put a defence together" in 11 days.

I asked the Tenant if they had evidence that they tried to upload documentary evidence two days prior to the hearing but were locked out from doing so. The Tenant said they do not.

The Agent did not agree to an adjournment and submitted that the Landlord sought an expedited hearing due to the overwhelming complaints and constant calls about the Tenant as well as other tenants threatening to leave and who are worried about their safety.

I considered rule 7.9 of the Rules and told the parties I would not adjourn the matter. I provided a summary of reasons for denying the adjournment request and told the parties the full reasons would be in the written decision.

Rule 7.9 of the Rules states:

> 7.9 Criteria for granting an adjournment
>
> Without restricting the authority of the arbitrator to consider 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;
> - whether the adjournment is required to provide a fair opportunity for a party to be heard; and
> - the possible prejudice to each party.

Rule 10 of the Rules allows for expedited hearings. Expedited hearings are urgent and have quick turn around times given their nature. Rule 10.3 states:

> 10.3 Serving the notice of dispute resolution proceeding package
>
> The applicant must, **within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:**
>
> - the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
> - the Respondent Instructions for Dispute Resolution;
> - an Order of the director respecting service;
> - the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
> - evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in

> accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].
>
> (emphasis added)

The Order of the Executive Director dated March 01, 2021 states as follows:

> Preamble
>
> Section 9(3) of the Residential Tenancy Act (RTA)…permit the director of the Residential Tenancy Branch to establish rules of procedure for the conduct of dispute resolution proceedings. Under Rule 10 of the rules of procedure, the director may set an application for dispute resolution down for an **expedited hearing meaning it will be heard on short notice to the respondent…**
>
> THE DIRECTOR ORDERS that:
>
> Pursuant to sections 71(2)(a) and (c) of the RTA and sections 64(2)(a) and (c) of the MHPTA, and subject to any further order made pursuant to those sections:
>
> 1. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date **that is between six and 11 days after the date the application is made** must serve their materials…
>
> (emphasis added)

I denied the adjournment request for the following reasons.

The Landlord submitted a total of 9 pages of evidence plus the tenancy agreement. The Landlord's evidence is not extensive.

The hearing package was made available to the Landlord November 03, 2021. The Tenant received the hearing package and Landlord's evidence November 04, 2021, the day after. The Landlord complied with rule 10.3 of the Rules in relation to the timing of service.

Pursuant to the Order of the Executive Director dated March 01, 2021, hearings can be set down pursuant to rule 10 of the Rules only six days after the Application for Dispute

Resolution is filed. The Order of the Executive Director dated March 01, 2021 allows for a respondent to have only six days to respond to an Application for Dispute Resolution and prepare for the hearing. Here, the Tenant had 11 days to respond and prepare for the hearing. I find this timeline sufficient because the Rules and Order of the Executive Director dated March 01, 2021 allow for it.

The Tenant stated that they tried to upload evidence prior to the hearing but could not do so given the timeline before the hearing. The Tenant did not provide evidence to support their statement, such as a screen shot showing they were precluded from submitting evidence given the timeline before the hearing. The RTB website does not preclude parties from submitting evidence prior to the hearing. In the absence of further compelling evidence, I do not accept that the Tenant was precluded from submitting evidence because the RTB website is not set up in this manner.

The Tenant did not seek to call any witnesses at the hearing. The Tenant did not submit any documentary evidence for the hearing. The Tenant did not provide any evidence to show that they took steps in the 11 days preceding the hearing to obtain evidence but were unable to do so given the timeline. For example, the Tenant did not submit evidence from potential witnesses saying they were unavailable for the hearing date. The Tenant did not submit evidence that they had sought police reports and this request was in process. In the circumstances, I am not satisfied based on the evidence provided that the Tenant took steps to respond and prepare for the hearing but was unable to do so given the timeline.

Given the above, I am not satisfied based on the testimony of the Tenant alone that the need for an adjournment did not arise due to the Tenant failing to take steps to respond and prepare for the hearing on November 04, 2021 when they received the hearing package and Landlord's evidence. Further, I am not satisfied an adjournment is required to provide the Tenant a fair opportunity to be heard because the Rules and Order of the Executive Director dated March 01, 2021 allow for the timeline that occurred and because the Tenant did not provide compelling evidence to show that they took steps to respond and prepare for the hearing but were unable to do so due to the timeline. As well, I find the prejudice to the Landlord in adjourning is high because this is an urgent application to end the tenancy early and an adjourned hearing could take weeks or even months to reschedule.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?

2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted in evidence. The agreement names a different landlord than the Landlord. The Agent testified that the landlord's name on the agreement is the previous property manager's name. The tenancy started September 01, 2020.

The Agent testified as follows. The Tenant is causing issues with other tenants. The Landlord receives frequent noise complaints about the Tenant. The Landlord receives a lot of complaints about the Tenant. The Landlord submitted email complaints about the Tenant but has also received complaints by phone and text message. The Tenant has become too much of an issue.

The Tenant testified as follows. Their rights as a Tenant have been violated. They had a right to be informed of complaints about them through a letter or a discussion. Management never informed them of the complaints at the time they were made. Management hid the complaints from the Tenant. The Tenant had no idea about the complaints until they received the Landlord's evidence. They ask that the case be dismissed immediately.

In reply, the Agent testified that the previous management company did bring the complaints to the Tenant's attention and that more recently the Tenant has been given verbal warnings about the complaints.

There is a Request for Compliance addressed to the Tenant dated June 14, 2021 in evidence. The Tenant testified that they never received this in June and did not receive it with the Landlord's evidence. The Agent testified that this was sent to the Tenant by the previous management company and served on the Tenant with the Landlord's evidence.

The Landlord's evidence includes complaints about the Tenant such as the following:

- The Tenant banging on other tenants' doors at 2:00 a.m. asking for cigarettes and asking if other tenants want to partake in doing drugs
- The Tenant blaring music every night
- The Tenant insulting and threatening other tenants when they ask the Tenant to turn their music down
- The Tenant having "drunken fights" in the parking lot at 6:00 a.m.
- Guests of the Tenant smashing windows or doors, breaking flowerpots and harassing other tenants
- The Tenant going door to door asking other tenants for cigarettes
- The Tenant harassing other tenants such that other tenants are threatening to call the police
- The Tenant yelling obscenities outside of another tenant's partially open window for almost an hour
- The Tenant sexually harassing other tenants and calling them names
- The Tenant and their guests yelling at another tenant because the other tenant asked them to stop stepping on the garage door opener to let people in at night
- The Tenant repeatedly stepping on the garage door opener to spite other tenants who asked the Tenant to stop doing so
- The Tenant and their guests fighting and yelling at all hours of the night
- The Tenant harassing women in the building
- The Tenant using derogatory language towards women in the building
- The Tenant swearing at another tenant and telling them they would "smash" them when the other tenant attended the rental unit to ask the Tenant to turn their music down at 10:00 p.m.
- Guests of the Tenant being aggressive towards women in the building

The complaints state that other tenants are scared and intimidated by the Tenant.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

3. Put the landlord's property at significant risk;

4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or

5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I am satisfied based on the evidence provided that the Tenant and their guests have caused disturbances to other tenants in the rental unit building because the Agent's testimony is supported by documented complaints about the Tenant from three other tenants. I find the documented complaints reliable and credible because they include detailed accounts and notes of the disturbances caused by the Tenant and their guests and the documented complaints corroborate each other.

I note that the Tenant did not dispute the allegations outlined in the documented complaints at the hearing when asked for their position on the Application. It was not until the end of the hearing, when the Tenant raised the issue of an adjournment, that the Tenant indicated a general disagreement with the allegations. The Tenant did not provide detailed testimony disputing the allegations outlined. The Tenant did not call any witnesses or provide any documentary evidence calling into question the reliability or credibility of the documented complaints.

The main argument of the Tenant was that they had a right to be notified of the complaints when they were made and they were not. I do not accept that the Tenant was not aware of the disturbance they were causing other tenants for the following

reasons. The documented complaints include statements about other tenants telling the Tenant that their behaviour is disruptive and I find the documented complaints reliable and credible. As well, I am satisfied the Tenant was provided a letter about their behaviour in June of 2021 because the Agent's testimony on this point is supported by the June 14, 2021 Request for Compliance in evidence whereas the Tenant has not submitted evidence to support their testimony that they were never told of complaints.

Further, the Tenant should have known their behaviour was disruptive and inappropriate without being told this by the Landlord. The behaviour includes banging on neighbour's doors at 2:00 a.m., insulting, threatening and harassing other tenants, fighting with their guests, their guests breaking things, yelling obscenities outside other tenant's windows, sexually harassing other tenants, using derogatory language towards women in the building and their guests being aggressive towards women in the building. This type of behaviour is obviously disruptive and inappropriate and the Tenant should have been aware of this, and aware that this type of behaviour could lead to an end to the tenancy, without having received written notice from the Landlord stating this.

Given the above, I am satisfied based on the evidence provided that the Tenant and their guests have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Further, I am satisfied it would be unreasonable and unfair to require the Landlord to wait for a One Month Notice to End Tenancy for Cause issued pursuant to section 47 of the *Act* to take effect due to the number of issues the Tenant has caused and the seriousness of these issues.

I am satisfied the Landlord has met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit effective two days after service on the Tenant.

Given the Landlord was successful, I award the Landlord reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act* and issue the Landlord a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to reimbursement for the $100.00 filing fee. The Landlord is issued a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 16, 2021

Residential Tenancy Branch