



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homestead Drywall Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlord applied on February 9, 2022 to:

- end a tenancy early, pursuant to section 56 of the Act; and
- recover the filing fee from the Tenant, pursuant to section 72 of the Act.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified she served the Notice of Dispute Resolution Proceeding (NDRP) and her evidence on the Tenant by posting it to the door on February 10, 2022, and submitted a proof of service form signed by a witness. The Tenant confirmed receipt of the Landlord's NDRP and evidence. I find the Tenant was served in accordance with Rule of Procedure 10.3 and the [Standing Order](#).

The Landlord testified that she attempted to confirm with the Tenant that she was able to read documents from a USB device, by including a note in her evidence asking the Tenant to contact the Landlord if she could not read the digital evidence, and by calling the Tenant on an unknown date. The Landlord testified that the Tenant did not respond to either inquiry. As the Tenant did not indicate she could not read the documents on the USB device, I will consider the Landlord's digital evidence in my decision.

The Landlord testified she served additional evidence on the Tenant in person on February 26, 2022 and uploaded it to the Residential Tenancy Branch on the same day.

As the deadline for the Landlord's evidence was February 14, 2022, and the Tenant provided affirmed testimony that she had not had sufficient time to read and respond to the Landlord's late evidence, I will not consider it in my decision.

The Tenant testified that she served her responsive evidence on the Landlord by posting it to the Landlord's door on February 22, 2022. The Landlord confirmed that she received hard copy and digital evidence from the Tenant on February 23, 2022. I find the Tenant served her evidence on the Landlord in accordance with Rule 10.5 and the Standing Order.

As there is no digital evidence before me from the Tenant, I will not be considering it in my decision.

Preliminary Matter

At the beginning of the hearing, the Tenant submitted that she was very ill, had a fever of over 100 degrees, and was throwing up and having diarrhoea. The Tenant was quite agitated and began to cry.

As the Tenant sounded energetic, was expressing herself clearly, and was able to follow my instructions, I continued with the hearing.

Issues to be Decided

- 1) Is the Landlord entitled to an early end of tenancy and an order of possession?
- 2) Is the Landlord entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on October 15, 2021; rent is \$2,100.00, due on the first of the month; and the Tenant paid a security deposit of \$1,050.00, which the Landlord still holds.

The Landlord testified that on December 30, 2021, police responded to a violent conflict between the Tenant and one of the tenants (ML) who lives below her. The Landlord testified that as ML was retrieving mail from the shared mailbox, the Tenant struck ML in the face with a snow shovel, causing ML's face to bleed. The Landlord submitted as evidence a photo of ML with blood on his face. The Landlord testified that the police took the Tenant, later releasing her on orders that she have no contact with ML. The

Landlord submitted as evidence a police report which indicates that the Tenant called the police to report that ML ran at her while she was shovelling snow. The report documents ML's statement to the police, and states that the Tenant was arrested for assault with a weapon.

The Landlord testified that the Tenant has not abided by the police's no-contact order and was picked up by the police again within the last couple weeks for looking into ML's window.

The Landlord testified that every few days the Tenant is making excessive noise around 3:00 and 4:00 a.m., such that it is difficult or impossible for ML and his spouse to sleep. The Landlord testified that ML and his spouse reported that the noise sounds like the Tenant is dragging furniture, chopping wood, and that the Tenant is yelling and swearing.

The Landlord testified that ML's spouse has a medical condition which at times requires treatment on short notice—it is the reason why ML and his spouse live in town. The Landlord testified that on December 28, 2021, ML's spouse required urgent medical care, the Tenant had blocked ML's car in the driveway, and took her time in moving her car, stopping to chat with a neighbour. The Landlord submitted as evidence a photo of the Tenant's car blocking ML's car.

The Landlord testified that the Tenant is also frequently tripping the breakers, requiring ML to reset the breaker six times on or around February 26, 2022, for example.

The Landlord submitted as evidence written statements from ML and his spouse, a neighbour across the street from the rental unit, and a former roommate of the Tenant's, all of which corroborate the Landlord's testimony.

The Landlord testified that her application for an early end of tenancy was delayed because she was not previously aware that this is an option under the Act. The Landlord testified that once she learned of the possibility, she immediately applied for an expedited proceeding for an early end to the tenancy.

During her testimony, the Tenant was at times very emotional, and tended to jump between dates and events.

When given an opportunity to respond to the Landlord's testimony, the Tenant submitted that everything the Landlord had said was a lie and referred to the Landlord as "the lady with the forked tongue."

The Tenant testified that on December 28, 2021 she could not find a place to park due to the snow, so parked in front of the driveway. The Tenant testified that ML approached her and told her to move her car, which she did. The Tenant testified that she apologized to ML, and that ML said that if she ever blocks him in again, he will "blow up" her vehicle.

The Tenant testified that on December 30, 2021, she was shovelling snow, the Landlord was there, and ML "came at" the Tenant, repeating: "You fucking bitch," took the shovel from the Tenant, and hit himself with it. The Tenant submitted that the Landlord was the cause of ML's behaviour, but did not explain how that was the case, or provide evidence in support.

The Tenant testified that on January 2 or 3, 2022, ML was banging on his ceiling while the Tenant and a friend were praying.

The Tenant testified that on January 31, 2022, she sought a restraining order against ML, which she later obtained. The Tenant submitted as evidence a Province of British Columbia statement form which indicates she fears that ML will cause her personal injury, that ML threatened to blow up her car on December 28, and that on December 30, 2021, ML approached her while she was shovelling, called her a "fuckin bitch," grabbed the shovel out of her hands, and hit himself with it.

Analysis

Section 56 of the Act establishes the grounds whereby a landlord may make an application for dispute resolution to request (1) an early end to tenancy, and (2) an order of possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the Act for a landlord's notice for cause.

When seeking to end a tenancy early and obtain an order of possession under section 56, a landlord has the burden of proving, for example, that a tenant has:

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or

- significantly interfered with or unreasonably disturbed another occupant or the landlord; **and**
- it would be unreasonable or unfair to the landlord or other occupants to wait for a One Month Notice to End Tenancy for Cause under section 47 of the Act to take effect.

Based on the testimony and evidence presented by the Landlord that the Tenant assaulted ML with a snow shovel; has delayed the spouse of ML from accessing urgent medical care; and frequently makes very loud noise at 3:00 and 4:00 in the morning, keeping ML and his spouse awake, I find that in accordance with section 56 of the Act, the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, and has significantly interfered with or unreasonably disturbed another occupant or the Landlord, and, that it would be unreasonable or unfair to the Landlord or the other occupants to wait for a One Month Notice to End Tenancy for Cause under section 47 of the Act to take effect.

I found the Landlord's testimony more credible than that of the Tenant; the Tenant's testimony was confusing and she provided no proof for her statements, including that ML chased her while swearing at her, and that the Landlord caused ML to behave in this manner. I also found the evidence presented by the Landlord compelling and convincing, particularly the police report.

Therefore, I find the Landlord is entitled to an early end of tenancy and an order of possession.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in her application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the Landlord to retain \$100.00 of the Tenant's security deposit in satisfaction.

Conclusion

The Landlord's application is granted.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant.

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: March 03, 2022

Residential Tenancy Branch