



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET, FFL

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, for an early end to the tenancy, and to recover the fee for filing this Application for Dispute Resolution.

The Residential Tenancy Branch Director has established an expedited hearing process pursuant to Rule 10 of the Residential Tenancy Branch Rules of Procedure. The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits. The Residential Tenancy Branch determined that this Application for Dispute Resolution should be the subject of an expedited hearing.

Section 71(2)(a) and (c) of the *Residential Tenancy Act (Act)* allow the Residential Tenancy Branch Director to order that documents be served in a manner the director considers necessary, despite the methods of service provided for in sections 88 and 89 of the *Act*, and that a document not served in accordance with those sections is sufficiently given or served for purposes of the *Act*.

The Residential Tenancy Branch Director has issued a standing order on service establishing the methods of service that parties to an expedited hearing must use, unless ordered otherwise by the director. The standing order, dated March 01, 2021, permits an Applicant to serve hearing documents to a Respondent in various ways, depending on when the Application for Dispute Resolution was filed and when the hearing is scheduled.

The Landlord stated that on March 12, 2022 two copies of the Dispute Resolution Package was personally served to the female Tenant, who is an adult who lives in the unit with the male Tenant. On the basis of the undisputed evidence, I find that these documents were personally served to the female Tenant in accordance with section 89(1) of the *Residential Tenancy Act (Act)*. This method of service is consistent with the standing order of March 01, 2021.

The standing order of March 01, 2021 permits an Applicant to serve hearing documents to a Respondent by serving it to an adult who resides in the rental unit with the Respondent only if the hearing date is between six and 11 days after the date the Application for Dispute Resolution is made. As the hearing was scheduled for later than 11 days after the Application for Dispute Resolution was made, I find that the Landlord did not have the right to serve the male Tenant in this manner.

While I accept that the Landlord served a second copy of the Application for Dispute Resolution to the female Tenant on March 12, 2022, I find that this is not a proper method of serving hearing documents to the male Tenant. I therefore cannot conclude that the male Tenant has been properly served with notice of these proceedings.

As the female Tenant has been properly served with notice of these proceedings, the hearing proceeded in her absence.

As the male Tenant was not properly served with notice of these proceedings, I dismiss the application for an Order of Possession or a monetary Order that names the male Tenant. This is largely irrelevant, however, as any Order of Possession granted to the Landlord as a result of these proceedings will name the female Tenant and "all other occupants".

The Landlord stated that the evidence submitted to the Residential Tenancy Branch on March 01, 2022 and March 12, 2022 was personally served to the female Tenant with the Dispute Resolution Package on March 12, 2022. In the absence of evidence to the contrary I find that this evidence was served to the female Tenant in accordance with section 88 of the *Act* and it was accepted as evidence for these proceedings. I find that the Tenant has had a reasonable amount of time to consider this evidence.

The Landlord stated that the evidence submitted to the Residential Tenancy Branch on March 13, 2022 was personally served to the female Tenant on March 17, 2022. In the absence of evidence to the contrary I find that this evidence was served to the female

Tenant in accordance with section 88 of the *Act* and it was accepted as evidence for these proceedings. I find that the Tenant has had a reasonable amount of time to consider this evidence.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should this tenancy end early and, if so, should the Landlord be granted an Order of Possession?

Background and Evidence

The Agent for the Landlord stated that:

- She is the Landlord's wife and she lives on the residential property;
- On February 17, 2022 she walked past the rental unit and, in doing so, was able to look through a window into the rental unit;
- While looking through the window she saw the Tenants' guest cleaning a rifle; and
- Her observations were reported to the police.

The Landlord stated that:

- The tenancy began on June 16, 2021;
- Since the tenancy began there has been a lot of vehicle and foot traffic to/from the rental unit, which caused him to believe drugs are being sold from the rental unit;
- Other tenants living on the residential property have complained about noise disturbances related to the amount of traffic coming to the residential property;
- They live on the residential property and are concerned for their safety due to the presence of firearms;

- On February 17, 2022 the police emergency response team executed a search warrant at the rental unit;
- The police advised him that two people had been arrested on February 17, 2022;
- He believes were the male Tenant and a guest were arrested on February 17, 2022;
- The police advised him that guns had been found in the rental unit on February 17, 2022;
- The police advised him that something had been found in the walls of the rental unit, although they did not specify what had been hidden in the walls;
- The police recommended that they seek an “emergency eviction”;
- He spoke with the female Tenant, who apologized for the holes in the wall and assured him they would be repaired;
- The female Tenant did not explain why there were weapons in the rental unit; and
- The male Tenant has a history of possessing concealed weapons.

The male Landlord stated that he submitted evidence to show that both Tenants have a history of possessing weapons. When he was asked how he was aware of the Tenant’s weapons history, the Landlord then directed me to justice.gov.bc.ca where he had obtained the Tenant’s history and he explained how the records could be viewed.

This website shows that individuals with the same name as the male Tenant and a similar name as the female Tenant were charged with careless use or storage of a firearm in May of 2020.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and that a landlord may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 to take effect.

After considering all of the evidence presented by the Landlord, I am satisfied that the Tenants or a person permitted on the residential property by the Tenants has engaged in illegal activity that 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. In reaching this conclusion I was heavily influenced by the undisputed evidence that two people, likely the male Tenant and a guest, were arrested in the rental unit on February 17, 2022.

On the basis of the undisputed evidence, I find that the police executed a search warrant at the rental unit on February 17, 2022, likely as a result of the Agent for the Landlord observing a rifle in the rental unit. On the basis of the undisputed evidence, I find that the police found guns inside the rental unit. Although there is no evidence to establish the men were arrested for offences related to those guns, it is entirely possible. The evidence that shows both Tenants have previously been charged

careless use or storage of firearms strongly suggests that the Tenants would not currently have the legal right to possess firearms.

I find that the possessing firearms in a residential setting endangers the safety of other people residing on the residential property, particularly when there are allegations that the Tenants have previously used/stored firearms unsafely.

On the basis of the undisputed evidence that the police executed the search warrant with the assistance of an emergency response team, I find it reasonable to conclude that the police believed that the Tenants and/or their guests were capable of violence. On the basis of the undisputed evidence that the police recommended the Landlord seeking an “emergency eviction”, I find it reasonable to conclude that the police believed the Tenants and/or their guests endangered the safety of other occupants of the residential property.

After considering all of the evidence, I find it is unreasonable for the landlord or other occupants of the residential property to wait for a notice to end the tenancy under section 47 to take effect. As such, I Order that this tenancy shall end on March 31, 2022 and I grant the Landlord an Order of Possession for that date.

I find that the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective on March 31, 2022. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court. This Order will only name the female Tenant, for reasons explained in the Introduction.

The Landlord has established a monetary claim, in the amount of \$100.00, in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for 100.00. This Order will only name the female Tenant, for reasons explained in the Introduction. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: March 24, 2022

Residential Tenancy Branch