



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as the Landlord says that the Tenants pose an immediate and severe risk to persons and/or property; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, K.M., the Landlord, and an interpreter for the Landlord, R.W., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One Witness for the Landlord, O.B., was also present and provided affirmed testimony.

During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said she had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that they had not submitted any documentary evidence to the RTB or to the Landlord. The Tenant said she tried, but had difficulty uploading her evidence. The Landlord was not willing to adjourn the hearing so that the Tenant could submit her evidence; therefore, we continued with the hearing.

However, I note that the Landlord submitted some of her evidence as late as two days prior to the hearing in one case, and four days prior to the hearing in another case. This timing is not compliant with Rule 3.1. **Rule 3.1** states that the applicant must, within

three days of the Notice of Dispute Resolution Proceeding Package being made available by the RTB, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Rule 3.14 says that evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing. As such, I find that the Landlord's late evidence is inconsistent with Rules, and therefore, I will not consider this late evidence in making my decision.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and she confirmed it in the hearing. The Tenant provided her address in the hearing. They both confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their allowable written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the Landlord be granted an early termination of the tenancy and an order of possession?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 29, 2021, with a monthly rent of \$2,850.00, with half due on the first day of each month and the other half due on the 15th of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,425.00, and no pet damage deposit.

The Landlord seeks an early termination of the tenancy, because she says the Tenants pose a serious threat of danger to people or property. The Landlord described the residential property as having lower tenants and upper tenants. The Tenants in this proceeding live in the upper unit, and the evidence before me is that they have recurrent conflict with the tenants in the lower unit.

The Landlord said that on February 13, 2022, she received a call from the lower tenant, [L.], who said she had been injured by one of the Tenants in the upper unit. The police were called and the Tenant, T.H., was charged with assault; however, there is no evidence before me that he has been convicted of this charge.

The testimony in the hearing indicated that the tenants of the residential property have serious personality conflicts and that they turn to the Landlord for resolution as the conflicts arise. The Landlord said that she gave both tenants warnings on January 10, 2022; however, when I asked the Landlord why she seeks to evict the upper Tenants, instead of the lower tenants, and she said: "The upper Tenant didn't pay rent since January." She later said: "And also, the basement tenant got injured."

The Tenant provided extensive testimony about how they are treated by the lower tenant(s). The Tenant said:

I have spoken to [the Landlord] on multiple occasions re [L.] downstairs. She called child services on us, bangs on our door, she assaulted me twice. She hit me, threw dog shit at me, told me my husband is a fucking pig.

She was on the phone enticing my husband, calling him names. She leaves the gate open. I have three small children and a dog, and she wouldn't close the gate.

[L.] was injured? She threw cannister at me. She assaulted me because she was throwing those items at our house, dog shit, coffee grounds, throwing it at our back door. [The Landlord] has the pictures of this. I begged her to help us. [L.] is

a narcissistic woman.

It's just the mom downstairs running her mouth constantly, calling us names, racist, rude, and in front of my small children. My husband told them to leave us alone.

The Landlord gave me all this information, I've called the Landlord and given her multiple police files. She said she was going to evict the downstairs tenant, because she's got mental illness. And maybe my husband doesn't know how to deal with that.

The Landlord's Witness testified, saying:

I just wanted to say that I'm 19, so I am an adult. [T.H.] had threatened my mom on December 30th; and on the night before Valentine's Day, we went out for a smoke. There was garbage outside, but it wasn't ours. It was a small propane tank, a 50-pound bag of fire wood. We threw the garbage over to them, and tossed an empty water jug. I saw [T.H.] swing a bag of fire wood.

Her children have never been outside, my Mom has never threatened them.

The Tenant testified:

Yet there are police reports – two that are noted - that their Mom assaulted me with the gate. She knows about my condition – I was in a wheelchair before. We've called the cops multiple times – they scream outside our bedroom window at night. [The Landlord] is aware of all of these things. I tried to have an adult conversation with [the Witness's] boyfriend. And he had to restrain her from attacking me.

She calls us pigs and goofs and they can hear everything – my children can. They put a bike locked to the fence to keep it open. I had to take a fence panel off to close the gate and repair it ourselves. It has been nothing but hell.

Later in the hearing, I specifically asked the Landlord why she served the upper Tenants with the eviction notice, rather than the lower tenants, and the Landlord immediately said: "Because the upper Tenant did not pay rent since January."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In order to establish grounds to end the tenancy early under section 56 of the Act, a landlord must not only establish that she has cause to end the tenancy, but that it would be unreasonable or unfair to require the Landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the Landlord, I find that she has not met that burden.

I find that the Landlord's evidence that the Tenants have significantly interfered with or unreasonably disturbed another occupant, and the Landlord of the residential property is only part of the story. I find that there is hostility between both sets of tenants. The Tenant, T.H., has been charged with assaulting [L.], the tenant from the lower unit; however, the T.H. has not been convicted of assault, as the matter remains before the courts. As such, I find it would be administratively unfair to consider that as definitely having occurred, as the lower tenant has claimed it occurred.

Further, when I specifically asked the Landlord why she served the upper Tenants with the eviction notice, rather than the lower tenants, the Landlord immediately said: "Because the upper Tenant did not pay rent since January." Unpaid rent is not a ground for an expedited hearing or for granting an Order of Possession pursuant to section 56 of the Act.

Due to these conclusions, I therefore find that the Landlord has not proven the reason she wants to evict the Tenants is because they pose an immediate and severe risk to people or property. Her first answer when I asked why she was evicting the upper Tenants and not the lower tenants related to whether rent was paid or not.

I find that the occupants of the residential property have a serious personality conflict; however, I find that the Landlord's evidence is insufficient to warrant evicting the (upper) Tenants in this set of circumstances. Rather, I urge the Landlord to pressure both sets of tenants to ignore each other, to behave as adults, and to try to live peaceably with each other.

Further, I am not satisfied that it would have been unreasonable and unfair to the Landlord to wait for a One Month Notice to End Tenancy to take effect. I find that the

Landlord has failed to provide sufficient evidence to support her claim for an early end to the tenancy.

I therefore dismiss the Landlord's Application to end this tenancy early, as well as her claim for recovery of the \$100.00 Application filing fee.

I caution all of the tenants of the residential property to behave prudently, as more incidents could, ultimately, lead to the end of the tenancy for someone.

Conclusion

The Landlord's Application is unsuccessful, as she failed to provide sufficient evidence to establish that the Tenants warrant being evicted early. The Landlord's Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 16, 2022

Residential Tenancy Branch