



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An early end to tenancy because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord, pursuant to section 56; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant and both landlords attended the hearing. As all parties were present, service of documents was confirmed. The tenant acknowledged receipt of the landlord’s Notice of Expedited Hearing and the landlord acknowledged service of the tenant’s evidence.

At the commencement of the hearing, I noted that the landlord had uploaded several pieces of evidence to the Residential Tenancy Branch online portal on June 14th while the application for expedited hearing was filed on May 26, 2022. The tenant acknowledges receipt of the late documents but states the paper documents were damaged in the rain. Rule 10 of the Residential Tenancy Branch rules of states that an applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution and that the applicant must, within one day of the Notice of Dispute Resolution Proceedings being made available, serve the respondent with that evidence.

The additional evidence provided to me on June 14th is considered late evidence and I determined that for this expedited hearing, the late evidence would not be considered in this decision. The landlord’s oral testimony and all the evidence provided in accordance with rule 10 would be admitted.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Does the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord?

Would it be unreasonable or unfair to the landlord to wait for a notice to end tenancy under section 47 [landlord's notice for cause] to take effect?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the admitted documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The landlord lives in a house located on a rural property hobby farm. The rental unit is a bachelor unit located above a garage space adjacent to the landlord's house. According to the landlord, the tenant's behaviour causes concern for him and his family.

On April 19th, the landlord's family was playing outside in the yard. The tenant began speeding up and down the driveway. Then, she stood in her window overlooking the yard, wearing a mask and hood. The landlord took a photo of the tenant looking out her window.

On April 20th the tenant was seen by the landlord standing on something and exposing her bottom while the landlord worked in the front yard. The landlord called the police. Within a few hours of the police leaving, the landlord's wife and a neighbour were in the yard and the neighbour saw movement in the tenant's unit. The landlord states the neighbour saw the tenant in the window fondling her uncovered breasts. A statement from the neighbour was provided as evidence.

On May 22, the landlord built privacy shutters to affix to the outside of the tenant's windows overlooking the family's yard. The landlord was afraid to go into the tenant's unit to install curtains. When installing the curtains, the landlord noticed the window had a crack in it, which he took photos of as evidence for this hearing. The landlord notes that the shutters can only be opened from the outside and that the windows are casement only, meaning they do not open up as a means of emergency escape. The shutters provide the landlord and his family with privacy from the tenant's eyes.

Another time, date unknown, the tenant was hiding in the bushes wearing all black and came out when their dog noticed her and barked.

The landlord testified that the tenant makes a point of watching him when he does work in the yard or if he and his family spend any time in their own yard. The tenant also makes a point of sitting on her deck, staring at them and making them uncomfortable. He and his family do not feel safe with the tenant living in such close proximity.

The tenant gave the following testimony. She has no history with the police and denies the landlord's accusations. She has a missing family member and the only reason the police ever came to her house was to get a statement. There is no way she was seen speeding up and down the driveway. Her car is 31 years old, incapable of speed and the road is unpaved. She frequently pulls over in their rural neighbourhood for locals who pass her because she drives so slowly. The day she was accused of driving fast was because she had to leave the property due to having migraines brought on by the landlord's use of heavy machinery. The landlord never advises the tenant of when he's going to do work on the property and doesn't let her know how long he will be working.

The day the photo was taken of her, she was looking out the window which was shaking due to the landlord using his tractor. She was trying to determine how long the landlord would be working. The tenant argues that it's not illegal or improper to look out the windows to observe the work going on right outside.

The landlord did not provide curtains like they said they would at the beginning of the tenancy. The rental unit is a bachelor, without a separate bedroom for changing and it's possible she got careless. She was not "fondling" her breasts, as the landlord states, but was caught in a state of undress accidentally. She quickly covered herself. The time the landlord says he saw her buttocks was likely when she was standing on a stool to close the curtains she now has and at the time, she was wearing underwear and clothing. He may have seen her thighs, but not her buttocks.

The tenant testified that she made window shades for her own privacy and to stop the landlords from seeing inside her unit during the daytime. She does not want to be seen by them and fully understands they don't want to view her. The privacy shutters installed by the landlord drastically alters the feeling inside the unit and blocks out the natural light she desires. To her, the suite now "feels like a dungeon".

She didn't break the glass in the windows now covered by the shutters. She was shocked when she discovered the crack. After she was accused of indecent exposure, she put brown paper on the windows and she noticed the crack when putting up window shades. The tenant attributes the crack to stress and pressure, not her actions.

The landlord served her with a 1 Month Notice to End Tenancy for Cause and she has filed an application to dispute the notice. A hearing has been set for that dispute for the end of August. The file number for the other dispute is recorded on the cover page of this decision. The landlord filed this expedited hearing seeking an early end to the tenancy after the tenant disputed the original notice to end tenancy.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of 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 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56(2)(a), I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord's property at significant risk;

- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

pursuant to section 56(2)(b)

it would be unreasonable, or unfair to the landlord, the tenant 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

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. The director has established an expedited hearing process under Rule 10 to deal with these cases (see RTB Rules of Procedure). The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits....

*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.

In this case, the landlord has served the tenant with a 1 Month Notice to End Tenancy for Cause and a hearing date has been set for the end of August. From the testimony of the parties, the reasons for ending the tenancy are relatively similar to the ones before me today. As I advised the parties at the commencement of the hearing, the landlord must satisfy me the tenant has committed any of the acts in the bullet points above. Below, I will determine whether the landlord has done so.

The landlord provided additional evidence after submitting the original application for an early end to tenancy which was excluded for not complying with rule 10 regarding evidence in support of an expedited hearing. As such, most of the landlord's evidence was oral testimony, supported by the original documents filed when making the application.

Although the landlord made several accusations against the tenant regarding possible indecent acts, I find there is insufficient evidence to establish this. I have no documents such as police reports or evidence of charges laid against the tenant to corroborate the accusations. I find the tenant's explanations as to why the landlord may have seen her, inside her own unit, closing blinds or being undressed too close to a window to be reasonably expected when living in close proximity to the landlord and his family. Further, looking out the windows or spending time on her own deck does not breach the *Act*, the regulations or the tenancy agreement, although it may make landlord or his family uncomfortable. Lastly, the landlord has installed shutters over the windows facing his yard, providing additional privacy for both his family and the tenant. To be clear, I do not find the tenant has engaged in any illegal activity that should cause her tenancy to end by an expedited hearing.

Likewise, although the landlord has alleged the tenant has sped down the driveway or purposely cracked the windows, I have insufficient evidence to corroborate this. As the policy guideline states, *applications to end a tenancy early are for **very serious breaches only and require sufficient supporting evidence***. The landlord's oral testimony was not supported by any supporting documents to corroborate it. I have no video evidence of the alleged speeding or proof that the cracks in the window were caused by the tenant's actions. The landlord has the onus to prove his version of events is the more likely one to be believed when a landlord seeks to end a tenancy pursuant to rule 6.6. Based on the lack of evidence before me, I do not find the tenant has significantly interfered with or unreasonably disturbed another occupant or the

landlord of the residential property; or seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.

Pursuant to section 56(2)(b), in order to succeed in obtaining an early end to tenancy, the landlord must satisfy me that it would be unreasonable, or unfair to the landlord, the tenant 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. While having the tenant living in close proximity to his family may cause the landlord and his family both discomfort and anxiety, I do not find an imminent danger to their health, safety or well-being while the tenant's application to dispute the notice to end tenancy for cause is pending. The tenant testified that she wants to be left alone as much as the landlord and his family do. As the landlord has served the tenant with a notice to end tenancy for cause, he has another opportunity to seek an end to the tenancy at the dispute resolution hearing set for late August. Consequently, I dismiss the landlord's application for an early end to the tenancy under section 56 of the *Act*.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord's application for an early end to the tenancy is dismissed without leave to reapply.

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: June 24, 2022

Residential Tenancy Branch