



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 35 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:35 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord confirmed his name and spelling. He stated that he owns the rental unit and provided the rental unit address. He provided his email address for me to send a copy of this decision to him after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests. He confirmed that he was ready and wanted to proceed with this hearing.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on June 20, 2022, and a notice of hearing was issued by the RTB on June 23, 2022. The landlord was required to serve that notice, the application, and all other required evidence in one package to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord stated that the tenant was served with the landlord's application for dispute resolution hearing package on June 23, 2022, by way of posting to the tenant's rental unit door and by handing a copy to the tenant's boyfriend who lives with the tenant at the rental unit. The landlord stated that one of the tenants in the neighbouring property that the landlord owns, completed the above service. The landlord referenced photographs, which he agreed were not date or time stamped, that he provided as evidence for service. The landlord provided a signed, witnessed proof of service to confirm the above service information. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on June 26, 2022, three days after its posting to the rental unit door.

Preliminary Issue – Inappropriate Behaviour by the Landlord during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing
Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout this hearing, the landlord was upset and argumentative. He repeatedly interrupted me, spoke at the same time as me, and argued with me. I asked the landlord to allow me to speak so that I could answer his questions. I repeatedly warned the landlord regarding his inappropriate behaviour, but he continued with same. However, I allowed the landlord to attend the full hearing, in order to provide his evidence and submissions regarding his application.

The landlord repeatedly claimed that he was “frustrated” and he complained about the RTB process, stating “I know you guys don’t care.” He claimed that his applications took four months to obtain an RTB hearing. I notified the landlord that he filed this current application on June 20, 2022, and obtained this current hearing date of July 8, 2022, 18 days later. The landlord filed his previous early end to tenancy application on May 19, 2022, and obtained a hearing date of May 30, 2022, 11 days later.

The landlord appeared to be upset that his application for an order of possession for unpaid rent was scheduled for an October 4, 2022 hearing. The landlord applied for that ex-parte direct request on June 6, 2022, and a decision was issued by an Adjudicator on June 30, 2022, adjourning the matter to a participatory hearing because the landlord provided insufficient evidence of ownership of the rental unit.

Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlord’s documentary evidence and the testimony of the landlord at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

The landlord stated the following facts. This tenancy began on December 1, 2021 with the former landlord, as per a written tenancy agreement. The landlord purchased the rental unit on March 22, 2022 and continued the tenancy with the tenant but did not sign a new written tenancy agreement with her. Monthly rent in the current amount of \$2,300.00 is payable on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid by the tenant and the landlord received these deposits from the former landlord, when he purchased the rental unit. The landlord continues to retain both deposits. The tenant continues to reside in the rental unit, as the landlord owns the property next door and his neighbours report to him about the tenant.

The landlord testified regarding the following facts. He received numerous complaints from the neighbors. The bylaw department called the landlord and said due to complaints they received, they were going to complete a site inspection. The fire department, bylaw department, and the police came to inspect the rental unit on June 13, 2022. They indicated that the rental unit has to be vacated immediately because there was no power and it was a fire hazard. They said that the property had to be boarded up. The tenants are using flex cords, but no portable use of power is allowed. The police took the stolen generators away, but the tenants are still using generators, which are against the fire code. The City shut off the power to the rental unit and it is unsafe to live there. The landlord does not live in the same city as the rental unit. He issued a One Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenant on June 13, 2022, with the police present. He did not provide a copy of the 1 Month Notice for this hearing. He did not file an RTB application to obtain an order of possession for cause, based on the 1 Month Notice. He gave a copy of the fire department inspection report to the tenant. The effective date when the tenant has to vacate the rental unit, as per the 1 Month Notice, is July 13, 2022. The landlord cannot wait for the 1 Month Notice to take effect because the rental unit needs to be vacated immediately. He did not provide a copy of any orders from the fire department for this hearing, only a copy of the completed inspection report. He cannot provide immediate power to the rental unit as per the inspection report because he has to apply for a permit, and he cannot do that unless the property is vacant. The landlord was told this information verbally. He does not have any documents regarding the above verbal conversation or the fact that he is required to remove the tenants in order to apply for the permit. The inspection report says that the landlord has to provide power or have the property vacated but the landlord was told that the property must be vacated.

The landlord stated the following facts. He filed a previous RTB application on May 19, 2022, after which a previous RTB hearing occurred on May 30, 2022. A decision was issued by different Arbitrator on May 31, 2022, regarding the above hearing. That Arbitrator dismissed the landlord's application for an early end to tenancy and an order of possession because the landlord did not provide a copy of the police report. The landlord applied for a review of that decision, which was also dismissed, as per a review consideration decision, dated June 16, 2022. The landlord provided the inspection report from the fire department as new evidence with his review application. However, the landlord applied late for the review and was told that since he knew about the issues beforehand, he should have obtained a fire department inspection earlier. He applied for an order of possession for unpaid rent against the tenant and that hearing is scheduled for October 4, 2022. That hearing is based on the landlord's direct request paper application for unpaid rent. The Adjudicator for the direct request application said

that the landlord could not prove ownership of the rental unit because he provided a copy of the tenancy agreement with the former landlord's name and the landlord's direct request application had his own name, so the two names did not match. The landlord attended the previous RTB hearing in May 2022, so the RTB already knows that he owns the rental unit because it was already proven at that hearing.

Analysis

Burden of Proof

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to present his application, claims, and evidence. The *Act*, *Regulation*, *RTB Rules*, and *Residential Tenancy Policy Guidelines* require the landlord to provide evidence of his claims and prove his application, in order to obtain an order of possession.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord testified that he served this application package to the tenant, as required. The landlord received a document entitled "Notice of Dispute Resolution Proceeding," dated June 23, 2022 ("NODRP"), from the RTB. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed the landlord that I had 30 days to issue this decision in writing.

The landlord received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support his application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord, as the applicant, to provide sufficient evidence of his claims, since he chose to file this application on his own accord.

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord did not properly present his claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

I provided the landlord with extra and ample time during this hearing to look up his application and evidence online, as he initially stated that he did not have it in front of him during this hearing. The landlord claimed that he had a lot of WhatsApp messages in front of him during this hearing, his evidence was not printed, and he had to look everything up online.

This hearing lasted 35 minutes and only the landlord attended the hearing, as the tenant did not attend. The landlord had ample opportunity to present this application. The landlord only relied on one document as evidence of the merits of his application, an

inspection report from the fire department. The landlord did not properly review or explain the inspection report at this hearing, until I asked him specific and repeated questions about it.

The only other evidence submitted by the landlord for this hearing, was six photographs regarding service of documents, a proof of service, and the written tenancy agreement with the former landlord.

Previous RTB Hearings

The landlord was informed about the burden of proof and the requirements of section 56 of the *Act*, since he filed a previous RTB application for an early end to tenancy and an order of possession on May 19, 2022, a previous RTB hearing occurred on May 30, 2022, and a previous RTB decision was issued by a different Arbitrator on May 31, 2022, dismissing the landlord's application without leave to reapply. The landlord applied for a review of the original decision, which was also dismissed in a review decision of June 16, 2022, when the landlord provided a copy of the fire department inspection report as new evidence after the original hearing. The file numbers for the above hearing appears on the cover page of this decision.

The landlord did not provide a copy of the previous RTB decision from the original hearing or the review decision, for this hearing. However, I located copies of them on the online RTB dispute website during this hearing. I briefly reviewed the contents of them with the landlord during this hearing. The previous RTB decision, dated May 31, 2022, which the landlord confirmed he received, states the following, in part, at pages 4 and 5:

The landlord has applied to end the tenancy early, pursuant to section 56 of the Act.

Section 56(2) states (emphasis added):

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) 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, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) 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 [landlord's notice: cause] to take effect.

Residential Tenancy Policy Guideline 51. Expedited Hearings states that the expedited hearing process has been established for 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 landlord has testified that the neighbours of the rental unit have complained about noise and violence, and submitted as evidence an email from one of the neighbours.

The landlord testified that he was told by a police constable that the April 30, 2022 incident in which two people were badly beaten was the result of a narcotics deal gone bad, but did not call the officer as a witness. The landlord has also testified that he has "nothing against" the tenant and occupants, and that the only reason he applied for an early end of tenancy is because of complaints from the neighbours.

As the landlord has provided insufficient evidence to prove that, on a balance of probabilities, that there is an imminent danger to the health, safety, or security of the landlord or the tenant, I do not find it would be unreasonable for the landlord to wait for a One Month Notice to End Tenancy for Cause to take effect.

Therefore, I dismiss the landlord's application for an early end of tenancy, pursuant to section 56 of the Act.

As the landlord is unsuccessful in his claim, I decline to award him the filing fee.

Findings

Section 56 of the Act requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) of the Act **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the Act, the landlord must show, on a balance of probabilities, that:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:*
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
 - (iii) put the landlord's property at significant risk;*
 - (iv) engaged in illegal activity that*
 - (A) has caused or is likely to cause damage to the landlord's property,*
 - (B) 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, or*
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
 - (v) caused extraordinary damage to the residential property...*

The landlord did not testify about which one of the above parts of section 56(a) of the Act, are relevant to this application.

Residential Tenancy Policy Guideline 51 states the following, in part:

B. EXPEDITED HEARINGS

... These are circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant...

...

C. TYPES OF EXPEDITED HEARINGS

Early End of Tenancy

Under section 56 of the RTA and section 49 of the MHPTA, a landlord may apply to end a tenancy early and obtain an order of possession if 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 to take effect under section 47 the RTA or section 40 of the MHPTA [landlord's notice: cause], and a tenant or their guest has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or manufactured home park;*
- *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity (see Policy Guideline 32: Illegal Activities) that:*
 - *has caused or is likely to cause damage to the landlord's property,*
 - *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 or manufactured home park,*
 - *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or*
- *caused extraordinary damage to the residential property or manufactured home park.*

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. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;*
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;*
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or*
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the Act. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

I find that the landlord did not provide sufficient documentary evidence to support his application for this hearing, as per Residential Tenancy Policy Guideline 51. As noted above, the landlord only provided an inspection report as evidence regarding the merits of his application.

The inspection report contains "notes," including the following, in part, which I read aloud to the landlord during this hearing:

"You must either provide immediate power to the property or remove the occupants to ensure their safety."

The landlord said that he was verbally told by someone that the rental unit had to be vacated, in order for the landlord to apply for a permit to provide power to the property. He did not indicate who he spoke to, when he spoke to them, or any other details of this verbal conversation. He did not provide documentary evidence of this verbal conversation.

The landlord referred to the tenant's non-payment of rent during this hearing. Payment of rent is not relevant to this current application for an early end to tenancy, as it is not contained in section 56 of the *Act* above.

The landlords failed to show the urgency of this situation to demonstrate that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined. The landlord stated that a 1 Month Notice was issued to the tenant on June 13, 2022. He said that it was effective on July 13, 2022. He did not indicate the details on the notice, such as the reason the notice was issued or the details of the cause.

The landlord did not provide a copy of the 1 Month Notice for this hearing. The landlord had ample time to provide evidence prior to this hearing, as this application was filed on June 20, 2022, and this hearing occurred on July 8, 2022. The landlord did not mention the existence of the 1 Month Notice until I specifically asked him about it. He did not indicate the date on the notice, the effective date, or when it was served to the tenant, until I specifically asked him about it.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's entire application 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: July 08, 2022

Residential Tenancy Branch