



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nest Property Management and Real estate
Service and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with an application by the landlord under the Residential Tenancy Act (the Act) for the following:

- An order for early termination of a tenancy pursuant to section 56

The landlord's agent and building manager BB attended ("the landlord"). The landlord had opportunity to provide affirmed testimony, present evidence, and make submissions. I explained the hearing process and answered questions.

Service upon Tenant

The tenants ("the tenant") did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 14 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

As the tenant did not attend the hearing, the issue of service was addressed.

The landlord testified the landlord's building manager BB personally served the Notice of Hearing and Application for Dispute Resolution on the tenant on

October 27, 2022. The landlord provided a witnessed Proof of Service of Expedited Hearing in the RTB form.

In consideration of the landlord's evidence, I find the landlord served the tenant effective on October 27, 2022, with the Notice of Hearing and Application for Dispute Resolution in compliance with the Act.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The landlord provided substantial testimony and supporting evidence. Not all this evidence is repeated or referenced in the Decision. Only selected, relevant and admissible evidence in support of my findings is referenced.

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing.

Background of the Tenancy

A copy of the tenancy agreement was submitted. The landlord testified to the particulars as follows:

INFORMATION	DETAILS
Type of Tenancy	Fixed term then month-to-month
Beginning Date	July 1, 2022
Fixed Term End Date	June 30, 2022, then month-to-month
Vacancy Date	ongoing
Rent payable on first of month	\$1,618.00

Security deposit	\$797.50
Pet deposit	\$797.50
Arrears of Rent	none

The landlord testified to many occurrences of unacceptable conduct by the tenant over a period of several months which seriously disturbed the occupant of the unit immediately below the tenant who lived alone with a young child. The conduct included noise at all times of the day and night, screaming foul language at the tenant, smoking marijuana in contravention of the lease, and placing feces on the occupant's stairs. The tenant's conduct resulted in numerous warnings and the attendance of the police.

The landlord submitted copies of many signed statements and correspondence including a chronology and details from the downstairs occupant, copies of statements from that occupant's mother and sister, and photographs. The downstairs occupant and her child stated in their written submissions that they lived in fear of the tenant and anxiety about what the tenant would do next.

One Month Notice

As a result of continuing similar actions by the tenant, the landlord issued a One Month Notice in the RTB form, a copy of which was submitted, as follows:

INFORMATION	DETAILS
Type of Notice	One Month Notice
Date of Notice	October 20, 2022
Effective Date of Notice	November 30, 2022
Date and Method of Service	Person, October 20, 2022

Effective Date of Service	October 20, 2022
Reasons for Issuance	Significance interference, risk to health and safety, breach of material term
Application for Dispute Resolution filed	October 20, 2022

The parties engaged in discussions and agreed the tenant would vacate the unit on December 15, 2022. Both signed a Mutual Agreement to End a Tenancy in the RTB form, a copy of which was submitted, as follows:

INFORMATION	DETAILS
Document	Mutual Agreement to End a Tenancy
Date	October 24, 2022
Effective Date	December 15, 2022

The landlord requested an Order of Possession effective December 15, 2022, and an award for \$100.00 for reimbursement of the filing fee.

Analysis

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

The standard of proof in a dispute resolution hearing is on a balance of probabilities which means that it is more likely than not that the facts occurred as

claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section states:

Application for order ending tenancy early

56 (1) A landlord may make an application for dispute resolution to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and
- (b) granting the landlord an order of possession in respect of the rental unit.

Expedited hearings are for serious matters; they are scheduled on short timelines and on short notice to the respondent.

Policy Guideline 51 – Expedited Hearings provides guidance on applications of this nature. The Guideline states that the expedited hearing procedure is 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 Guideline states in part as follows:

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.

...

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.

To grant an Order of Possession under section 56(1), I must be satisfied as follows (emphasis added):

56 (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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The landlord relied on sections (a)(i) and (ii). That is, the tenant had:

- (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;

After considering the Act, hearing the testimony and reviewing the evidence, I find the landlord has established the first ground, that is, that the tenant has significantly interfered with or unreasonably disturbed people living in the building, that is, the downstairs occupant. I accept the landlord's uncontradicted, credible and supported evidence in all aspects.

I find as follows. The cumulative effect of the tenant's actions amounted to significant interference and unreasonable disturbance under the Act. I find the tenant has disturbed the downstairs occupant as the landlord testified. The tenant screamed abuse at the downstairs occupant terrifying her and her child. The tenant behaved threateningly in such a manner that the police were called. I find the tenant created unacceptable and substantial noise and disturbance. I find the tenant has been warned by the landlord and the police many times to no avail.

I find the landlord provided credible testimony and sufficient supporting evidence from witnesses and downstairs occupant. I find the landlord has established that the events happened in the manner to which they testified. I find the landlord's account of what took place to be reliable and believable.

I find the landlord has shown that there is a reasonable risk of ongoing disturbance of a serious nature as the behaviour continues unabated.

In summary, in considering the evidence and submissions, I find the landlord has met the burden of proof with respect to the first section:

significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

I also find the landlord has met the burden of proof with respect to the second part of the test, as follows:

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.

I find the landlord has established that it is unreasonable or unfair to wait for the landlord to issue a One Month Notice to End Tenancy for Cause in view of the threats, police involvement, the pattern of disruptive behavior over many months, and the nature of the violent threats.

In this case, the parties have signed a Mutual Agreement to End Tenancy effective December 15, 2022. I find the parties entered into a Mutual Agreement to End Tenancy requiring the tenants to vacate the unit that date.

The Act permits the issuance of an Order of Possession where the landlord and the tenant have agreed upon an upcoming date for vacancy (emphasis added):

Order of possession for the landlord

55 (1) [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

...

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an Order of Possession under sections 55(2)(d) 56 of the Act.

Accordingly, I allow the landlord's application for an early end to this tenancy and an Order of Possession will be issued.

I also award the landlord reimbursement of the filing fee of \$100.00 pursuant to section 72 which the landlord may deduct from the security deposit.

Conclusion

I grant an Order of Possession pursuant to sections 55(2)(d) 56 of the Act. to the landlord effective at 1:00 PM on December 15, 2022. This Order must be served on the tenant.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: November 10, 2022

Residential Tenancy Branch