



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 scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

The landlord and the tenant appeared for the hearing. The landlord's son was in attendance at the hearing to interpret for the landlord. The tenant appeared with an Advocate. The parties were affirmed.

I instructed the landlord's son to provide translation only and to refrain from adding anything to his father's submissions. The landlord's son confirmed he would do so; however, the tenant wanted it noted that the landlord's son may not follow my instructions.

I confirmed the parties had exchanged their respective hearing materials and evidence with each other. The landlord's evidence included digital evidence. The tenant confirmed he was able to view/hear the digital evidence. The tenant's evidence was served late; however, the landlord confirmed he reviewed it and had prepared to respond to it. Accordingly, I admitted the evidence of both parties as I was satisfied neither party would be prejudiced by doing so.

I explained the hearing process to the parties and gave the parties an opportunity to ask questions about process.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

All relevant evidence was carefully considered in reaching this decision. However, only relevant oral and documentary evidence needed to resolve the issue(s) of this dispute, and to explain the decision, is referenced in this decision.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and that he should be provided an Order of Possession under section 56 of the Act?

Background and Evidence

The two year fixed term tenancy started on July 1, 2021. The tenant is required to pay rent of \$2000.00 on the first day of every month. The rental unit is a two bedroom laneway house above a garage. Electricity is not included in rent. The electricity bill for the laneway house is currently in the tenant's name.

The landlord lives on the main floor of the main house located on the same property as the rental unit. There are also three basement suites in the main house; however, only two are currently tenanted.

There are laundry machines in the garage of the laneway house that are used by the tenant and other occupants of the main house. The landlord also has an electric vehicle charger wired to the laneway house.

The landlord's reasons for seeking an early end to the tenancy is because the tenant terminated the electricity to the landlord's vehicle charger, the shared laundry machines, and the exterior light on the laneway house on October 1, 2022.

The landlord submitted that the loss of the electric vehicle charger impacted the landlord because he had to temporarily bring in another cord to charge his vehicle but it is slower to charge the vehicle. Also, the tenants living in the basement suites lost the ability to do laundry in the laneway house garage so the landlord had to provide them access to the laundry machines in the main house. The loss of the exterior light also decreased the security of the property.

The landlord submitted that he instructed the tenant to restore the electricity by way of a letter but the tenant did not. The landlord did not check to see if power was restored to the car charger or laundry machines because the tenant threatened to report the landlord as stealing electricity from him.

The landlord submitted that the landlord's right to use the car charger connected to the tenant's electricity account, and use of the laundry machines by other occupants, was agreed upon in term 2 of the addendum to the tenancy agreement. The landlord stated the monthly rent took into account the landlord's share of the electricity consumption although the landlord has also given the tenant some money, at times, to go towards the tenant's electricity bill. The landlord denied that term 2 in the addendum was ever amended or changed.

The landlord acknowledged that a One Month Notice to End Tenancy for Cause ("1 Month Notice") was served on October 2, 2022 and it has an effective date of November 30, 2022. The landlord believes the tenant may have tried to dispute the 1 Month Notice although the tenant appears to have erroneously indicated he was disputing a 10 Day Notice to End Tenancy for Unpaid Rent in the paperwork the tenant served the landlord. A dispute resolution hearing is set for January 2023.

The tenant acknowledged that he terminated the power to the landlord's electric car charger, the washing machine, and some lights on October 1, 2022. The tenant received the landlord's demand to restore the power and the tenant did so on October 20 or 22, 2022 and the power has remained on for all outlets and fixtures since then. The tenant testified that he physically showed the landlord that the power was restored since the landlord does not speak English.

The tenant denied telling the landlord he would report electricity theft if the landlord connected to the car charger but acknowledged that he made such a statement when the landlord tried to report a "move" to BC Hydro in an attempt to get the hydro account out of the tenant's name and into the landlord's name, twice.

The tenant indicated that the reason he terminated the power to these certain outlets is because the landlord was supposed to pay him \$100.00 per month for electricity consumed by the car charger and shared laundry but the landlord did not make all of the required payments. The tenant claims that term #2 of the addendum was amended in August 2022 to reflect the landlord's agreement to pay the tenant \$100.00 per month. I noted that the amendment included in the tenant's evidence was not signed. The tenant was of the position it was signed by email.

The tenant stated that had filed an Application for Dispute Resolution in September 2022 to seek resolution to the matter concerning the hydro bills but a hearing was not

scheduled until January 2023 so the tenant resorted to terminating the power for certain outlets when the landlord did not make the \$100.00 payments for the hydro.

The tenant also indicated that he took the 1 Month Notice to the Residential Tenancy Branch ("RTB") to dispute it but the RTB must have indicated the wrong type of Notice to End Tenancy when they prepared the paperwork to serve to the landlord. I suggested to the tenant that he review the documents served for the January 2023 hearing to ensure it is correct and make any necessary changes.

The tenant submitted that the loss of power for the car charger, washing machine and exterior light from October 1, 2022 to October 20, 2022 is insufficient to end the tenancy under section 56 of the Act as his actions did not jeopardize anybody's health or safety and the landlord was able to charge his car with an cord run from the main house. The landlord was also able to provide the basement suite tenants with access to the washing machine in the main house. The tenant stated the dryer remained powered since it is connected to the same breakers that power appliances in the rental unit.

The tenant pointed out that the landlord recently removed the dryer from the laneway house garage to install in the main house for the basement suite tenants. The landlord's son claims the dryer was removed to perform repairs on it and that it would be reinstalled in the laneway house garage this coming Saturday.

Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a One Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 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.

(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.

[My emphasis underlined]

Section 47 of the Act provides a mechanism for landlords to bring a tenancy to an end where the tenant has given the landlord cause to end the tenancy. A notice given under

section 47 affords the tenant ten days to dispute the 1 Month Notice or at least one full move to vacate the rental unit. Section 56 also requires that the tenant has given the landlord cause to tend the tenancy; however, the seriousness of the alleged offence(s) or conduct is so dangerous that it unreasonable to wait for a 1 Month Notice to take effect. Accordingly, section 56 is intended to apply in the most urgent and severe circumstances and applications made under section 56 are processed as an “expedited hearing”.

As provided under Residential Tenancy Policy Guideline 51: *Expedited Hearings*, expedited hearings are reserved for “... circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant...” The expedited process available for applications made under section 56 of the Act is not intended to permit “queue jumping” and to permit such would undermine the availability of hearings for truly emergency situations.

In the matter before me, the landlord has given the tenant a 1 Month Notice and the enforceability of that 1 Month Notice will be determined at a later date. While serving a 1 Month Notice does not preclude the landlord from making an Application for Dispute Resolution under section 56 of the Act, I must be satisfied that the circumstances are so urgent and severe that it is unreasonable for a 1 Month Notice to take effect.

It is clear to me that the parties are in dispute about the electricity consumed by the landlord and the landlord’s other tenants and whether the tenant has been sufficiently compensated for such. Since the electricity used by the landlord’s car and the shared laundry machines is in the tenant’s BC Hydro account the tenant may have a cause for action; however, that dispute is monetary in nature and ought to be resolved accordingly. At issue for this particular proceeding is whether the tenant’s action of terminating the electricity to the car charge, common laundry machine(s), and exterior light fixture is grounds for ending the tenancy under section 56 of the Act.

It is undeniable that the tenant took matters into his own hands in disconnecting the power to the landlord’s car charger and the shared laundry machine(s); however, the tenant claims to have restored the power on or about October 20, 2022 and showed the landlord this. The landlord acknowledged he has not tried to use the car charger or laundry machines to confirm whether they are with power, explaining he is worried he would be reported for electricity theft.

I did not hear any evidence from the landlord that would indicate the health or safety of any of the occupants was put at significant risk by the tenant’s actions, or that the

landlord's property was put at significant risk. The landlord was able to charge his car and provide alternative laundry services to his other tenants while the power was disconnected. I acknowledge having to take such action was likely an inconvenience and the landlord and the other tenants should not have endured such inconvenience. However, I am unsatisfied that the situation is or was so urgent, severe or dire that the landlord cannot wait for the 1 Month Notice to take effect, if it is upheld. Therefore, I deny the landlord's request for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

Having heard from the tenant, I am reasonably satisfied that the tenant did restore the power to the car charger, laundry machine(s) and exterior light; however, and as I stated during the hearing:

Effective immediately, **I order the tenant to refrain from disconnecting or otherwise terminating the power to the electric car charger, shared laundry machine(s) or exterior lights**, unless the tenant obtains an Arbitrator's authorization to do so.

Failure to comply with my order above shall be grounds for eviction under section 47(1)(l) of the Act.

I further order the landlord to return the clothes dryer to laneway garage for the tenant to use no later than Saturday, November 26, 2022.

To be clear, I make no finding as to whether term #2 of the addendum is enforceable or any finding as to whether term #2 was amended. Further, I make no finding as to whether the landlord had a basis for issuance of the 1 Month Notice. Nor, do I make any finding as to whether the 1 Month Notice should be upheld or cancelled. As explained above, the criteria for ending the tenancy under section 56 of the Act is much more severe and the circumstances of this case do not rise to that level.

Conclusion

The landlord's application for an order to end the tenancy and obtain an Order of Possession under section 56 of the Act is dismissed.

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 25, 2022

Residential Tenancy Branch