



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act and to recover the cost of the filing fee.

The landlord's agent (landlord) and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Both parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenant confirmed receipt of the landlord's application and evidence. The tenant confirmed not providing evidence as she was unable to find an advocate to assist her in this matter.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice)?

Is the landlord entitled to an order of possession and to recover the filing fee?

Background and Evidence

The undisputed evidence is that the tenancy began on January 1, 2018 and monthly rent is geared to income. The landlord is a public housing agency. The landlord submitted that they offer housing for the hard-to-house and their mission statement reflects offering subsidized housing to tenants with different challenges.

In the landlord's application, the landlord writes as follows:

Unit was deemed to be unsafe by the Fire Safety Inspector who issued an order requesting tenant to clear the clutter and to comply with Fire Safety Regulations and bylaws. Tenant failed to act. Unit condition represents danger to the tenant, the other residents and to the landlords property.

[Reproduced as written]

The landlord provided a written synopsis of the claim, reproduced as follows:

Insert

In addition to the synopsis, the landlord testified as follows: The clutter is still present in the rental unit and the condition has not improved. The tenant was served warning and caution letters through August 2022, which were filed in evidence. An additional problem with the tenancy and the rental unit was the rodent infestation. The landlord was in touch with the Fire Department, who expressed their understanding that the landlord was waiting to work with the tenant's social workers to resolve the issues. The issues, however, were never resolved. The tenant from the beginning of the tenancy has been assigned a tenant support worker in the building and the tenant did not use the support worker to resolve the issues. The tenant's support worker would be the person to speak to the tenant's social workers, had there been any contact. The tenant's social workers have not tried to contact the landlord or the tenant's support worker. The landlord has not issued the tenant a 1 Month Notice.

The tenant testified as follows: The tenant denied being told about the infestation or that she received letters about an infestation or the other warning letters. Her social workers have been trying to contact the landlord, but the landlord has not responded. There has been a significant improvement in her rental unit and she is working to resolve the issues. The fire in the kitchen happened in April, but agreed she did not contact the landlord because of her anxiety issues.

Analysis

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

Section 56 of the Act states:

- (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.

[emphasis added]

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

*... 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. (bold emphasis added)*

...

*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).*

The onus to prove their case is on the person making the claim, the landlord in this case. The standard of proof is on a balance of probabilities.

Section 56 of the Act lays out a 2-step process. The second part of the test is that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

Upon a review of the evidence, I find the landlord has not met the 2nd step of the 2-part process.

In reaching this conclusion, I find that the landlord's evidence points to circumstances that began in April 2022, when the fire occurred in the tenant's kitchen, and to other circumstances which were brought to the tenant's attention by way of letters and cautions to the tenant in July and August 2022. Although the fire may have occurred in April, the landlord became aware of the fire in August and yet did not file and complete their application until November 23, 2022. By delaying, I find the landlord has not met the 2nd part of the 2-part test that would prove urgent circumstances existed.

Had the landlord served the tenant a 1 Month Notice when the claimed issues were being addressed with the tenant, through August 2022, by their own evidence, the effects of the 1 Month Notice would have already occurred before filing this application for an expedited hearing.

While I accept the landlord's testimony that they delayed in filing the application due to their efforts to work with the tenant and her social workers, I must consider the requirements of the Act over personal circumstances.

For these reasons, I therefore find the landlord submitted insufficient evidence to meet the high bar needed to end this tenancy earlier than to wait for a 1 Month Notice to end the tenancy under section 47 of the Act.

I **dismiss** the landlord's application for an early end to the tenancy due to insufficient evidence, without leave to reapply.

The filing fee is not granted as a result.

The tenancy shall continue until ended in accordance with the Act.

The landlord is at liberty to serve a 1 Month Notice.

Conclusion

I have dismissed the landlord's application without leave to re-apply as I have determined that the landlord has not demonstrated that it would be unfair or unreasonable for the landlord to wait for a notice to end tenancy to take effect under section 47 of the Act.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 21, 2022

Residential Tenancy Branch