



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:50 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. Landlord SH (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. 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 ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

The landlord affirmed he served the notice of hearing and the evidence (the materials) in person to the tenant on December 16, 2022 at around 7:00 P.M. The landlord submitted a witnessed proof of service (form RTB9).

Based on the landlord's convincing testimony and the witnessed proof of service, I find the landlord served the materials in accordance with section 89(2)(a) of the Act on December 16, 2022.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of the tenancy?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord stated the ongoing tenancy started on March 15, 2022. Monthly rent of \$1,750.00 is due on the first day of the month. The landlord collected and holds a security deposit (the deposit) of \$825.00. The tenancy agreement was submitted into evidence.

The landlord testified the tenant verbally assaulted an occupant of the rental building on November 24, 2022. The landlord submitted a strata bylaw contravention notification dated December 15, 2022:

Date: November 24th, 2022. Time: Afternoon

It was alleged by the owner of the commercial unit (Dental office) that the tenant in Unit [rental unit] parked in the commercial parking area, which is reserved for dental office clients only. The vehicle in question was then towed (signage is posted in those areas as such). The tenant in Unit [rental unit] then verbally assaulted and threatened the owner and staff at the dental office (2 violations).

The landlord said the tenant turned the security cameras located in the building's parkade to the wall and allowed a guest into the rental building. The tenant's guest

broke into several vehicles. The landlord submitted a strata bylaw contravention notification dated December 15, 2022:

Date: November 30th, 2022. Time: Early AM

Council alleged (with the support of video footage, RCMP file [redacted for privacy]) that the tenant in [rental unit] let a guest into the lobby and then left them to roam the parkade unattended. This "guest" then proceeded to break into multiple vehicles in the parkade, causing thousands of dollars worth of damage.

The police file number is recorded on the cover page of this decision.

The landlord submitted a strata bylaw contravention notification dated December 15, 2022:

Date: December 9th, 2022. Time: Evening.

It was alleged by a building owner (confirmed by council through review of video footage) that the tenant in 415 and a guest of his tampered with the security surveillance camera in the parkade, so that it faced the wall, instead of its intended viewing area (2nd time in 2 days).

The landlord submitted this application on December 15, 2022.

Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

- (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 Branch Policy Guideline 51 states:

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.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the undisputed and convincing testimony offered by the landlord and the three strata bylaw contravention notifications, I find, on a balance of probabilities, pursuant to section 56(2)(a)(ii) of the Act, the tenant seriously jeopardized the safety of other occupants by threatening the dental office's staff on November 24, 2022 and allowing a guest to enter the parkade and break several vehicles on November 30, 2022.

If the landlord issued a notice for cause under section 47 of the Act because of the November 24 and 30 incidents, the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenant. I find that pursuant to section 56(2)(b), it would be unreasonable for the landlord to wait to end the tenancy by issuing a notice for cause due to the significant threat to the safety of the occupants caused by the tenant.

I grant an order of possession effective two days after service on the tenant, pursuant to section 56(2) of the Act.

As the landlord is successful in this application, the landlord is entitled to recover the filing fee.

Conclusion

Pursuant to section 56(2) of the Act, I grant an order of possession to the landlord effective **two days after service of this order**. The landlord is provided with this order in the above terms and the tenant must be served with this order. 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.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the deposit to recover the filing fee.

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: January 13, 2023

Residential Tenancy Branch