



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET

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.

The three tenants (collectively "tenants") did not attend this hearing. 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 9:30 a.m., with only me present. The landlord called in late at 9:33 a.m. This hearing ended at 9:46 a.m. This hearing lasted approximately 16 minutes total.

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. He 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 recordings of any RTB hearings by any participants. 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, which I answered. He did not make any adjournment or accommodation requests. He confirmed that he was ready to proceed with this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to remove tenant KC as a tenant-respondent party. The landlord requested this amendment during this hearing. He said that tenant KC died, and he did not want to pursue this application against him. I find no prejudice to either party in making this amendment.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on January 22, 2023, and a "Notice of Dispute Resolution Proceeding," dated January 25, 2023 ("NODRP") was issued by the RTB to the landlord. The landlord was required to serve the NODRP and all other evidence in one package to each of the three tenants, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord stated that he personally served each of the three tenants with separate copies of the landlord's application for dispute resolution hearing package on January 26, 2023. In accordance with section 89 of the *Act*, I find that all three tenants were personally served with the landlord's application on January 26, 2023.

Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an order of possession?

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 June 1, 2022. Monthly rent in the current amount of \$800.00 for each tenant, is payable on the first day of each month. No security or pet damage deposits were paid by the tenants to the landlord. The tenants continue to reside in the rental unit. No written tenancy agreement was signed by both parties, as these are only verbal tenancies.

The landlord testified regarding the following facts. He received 4 city fines. The tenants caused damages to the inside of the rental unit and the plumbing. There were holes in the walls and the doors. There are vehicles all over, as well as garbage and recycling everywhere. The city issued fines. The city said that the landlord can use it to remove the tenants. There is a future RTB hearing on April 13, 2023, for unpaid rent. The landlord gave a One Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenants. The landlord could not find the 1 Month Notice during this hearing. The 1 Month Notice may be related to the future hearing in April 2023. It is an unsafe environment for the other tenants. The other 2 tenants are paying rent, so it is unfair for them. These are illegal actions and that is probably why tenant KC died. The landlord wants this issue resolved.

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 tenants, as required. The landlord received the 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 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 a written decision after this hearing. The landlord affirmed his understanding of same.

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 sufficiently 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 ample time during this hearing to look up his evidence and present his application, submissions, and evidence.

This hearing lasted 16 minutes and only the landlord attended the hearing, as the tenants did not attend.

The landlord did not sufficiently review or explain his documents submitted for this hearing. I informed the landlord that he submitted photographs as evidence for this hearing. However, the landlord did not review these photographs or any other documents that he submitted as evidence for this hearing, nor did he point me to any specific documents, page numbers, provisions, or other information, during this hearing.

Findings

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the 30 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*, were relevant to his 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 failed to provide sufficient testimonial and documentary evidence to support his application, as per Residential Tenancy Policy Guideline 51.

I find that the landlord 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 tenants, but he did not submit a copy as evidence for this hearing and he said that he could not find a copy of it during this hearing. The landlord did not provide any details of the 1 Month Notice, such as the date it was signed, the effective move-out date, the reason(s) the notice was issued to the tenants, the details of cause, or how or when the notice was served to the tenants. The landlord did not mention the existence of the 1 Month Notice until I specifically asked him about it. He said that he did not know the 1 Month Notice was relevant to this application.

The landlord mentioned that a future RTB hearing was scheduled for April 13, 2023, but he did not provide the file number for that hearing, nor did he provide sufficient details, except indicating that it was for unpaid rent. Unpaid rent is not relevant to this current application for an early end to tenancy, pursuant to section 56 of the *Act*. The landlord claimed that the future hearing might be for a 1 Month Notice, but he did not know.

The landlord had ample time to provide the above evidence prior to this hearing, as this application was filed on January 22, 2023, and this hearing occurred on February 13, 2023.

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

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: February 13, 2023

Residential Tenancy Branch