



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

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

The agent attended for the landlord (“the landlord”). The landlord had opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 21 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.

Service upon Tenant

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

The landlord testified they served the tenant by posting the Notice of Hearing and Application for Dispute Resolution to the tenant’s door on February 9, 2023. The landlord submitted the RTB Proof of Service form in support of the testimony.

Further to the landlord’s evidence, I find the tenant was served with the documents on February 12, 2023.

RTB Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenant and the hearing continued without the tenant present.

Preliminary and Procedural Matters

The agent confirmed that the tenant continues to occupy the rental unit.

The agent confirmed their email address stated that they understood that the Decision would be emailed to them. The Decision will be sent by regular mail to the tenant as the landlord did not provide an email address for the tenant.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy early and obtain an order of possession under section 56 of the Act?

Background and Evidence

The landlord testified as follows:

INFORMATION	DETAILS
Tenancy Agreement, Signed, Submitted	yes
Type of Tenancy	Month-to-month
Beginning Date	March 10, 2018
Rent payable on first of month	\$1,114.23
Security deposit	\$525.00
Arrears of Rent	no

The landlord submitted 24 complaints starting October 4, 2021, primarily for the tenant causing noise and acting in an intimidating manner which disturbed and frightened other occupants of the building. The occupants complained of noise after midnight disturbing their sleep. The complaints also stated the tenant routinely smoked causing distress and annoyance to other building occupants.

Contrary to the tenant's obligations, the tenant would permit people to stay in the unit, smoking marijuana and playing loud music.

Because of the action of the tenants, the police were called to the building several times.

The tenant's behaviour has worsened over time. Many warnings were issued, and the tenant's behaviour has not changed. After commencing this dispute, the landlord received 4 more complaints.

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 of 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, ie: the landlord and occupants.

I find the cumulative effect of the tenant's actions to amount to significant interference and unreasonable disturbance upon the landlord and other building occupants.

I find the landlord provided credible testimony and sufficient supporting evidence of 24 complaints. 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 danger or harm to the other occupants by the tenant's behaviour and a risk of ongoing disturbance of a serious nature.

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.

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 under section 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 grant the landlord an award of \$100.00 for reimbursement of the filing fee which they may deduct from the security deposit on a one time basis.

Conclusion

I grant an Order of Possession pursuant to section 56 (Early End of Tenancy) to the landlord effective on two days' notice. 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: February 24, 2023

Residential Tenancy Branch