Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding AL STOBER CONSTRUCTION LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

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; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The two tenants, tenant MS ("tenant") and "tenant DM," did not attend this hearing. The landlord's four agents, landlord AB ("landlord's agent"), "landlord SH," "landlord KT," and "landlord AT" (collectively "landlord's agents") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 43 minutes from 9:30 a.m. to 10:13 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding ("NODRP"). I also confirmed from the teleconference system that the landlord's four agents and I were the only people who called into this hearing.

All hearing participants confirmed their names and spelling. The landlord's agent provided her email address for me to send a copy of this decision to the landlord after the hearing.

The landlord's agent stated that the landlord company ("landlord") named in this application owns the rental unit. She provided the rental unit address.

The landlord's agent and landlord SH stated that they are property managers for the landlord. Landlord KT and landlord AT said that they are husband and wife and are building managers for the landlord. The landlord's four agents confirmed that they all had permission to represent the landlord at this hearing. The landlord's agent identified herself as the primary speaker for the landlord at this 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, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord's agents. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests. They confirmed that they were ready to proceed with this hearing.

Preliminary Issue – Service of Documents

This matter was filed as an expedited hearing, pursuant to Rule 10 of the RTB *Rules*. The landlord filed this application on February 6, 2023, and an NODRP was issued by the RTB on February 8, 2023.

The landlord was required to serve the NODRP and all other required evidence in one package to each tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3. The online RTB dispute access site indicates that the landlord was emailed the above documents by the RTB on February 8, 2023, and each tenant was required to be served by February 9, 2023.

The landlord's agent stated that both tenants were served with separate copies of the landlord's application for dispute resolution package and first evidence package on February 9, 2023, by way of registered mail. She said that the tenant was served at the rental unit address. She claimed that tenant DM was served at her residential address, which was provided by the tenant to the landlord's agent, by text message on February 9, 2023. She said that the mail was refused by the tenant and the mail was ready for pickup by tenant DM on February 14, 2023. She stated that the landlord did not provide a copy of the above text message from the tenant or the Canada Post tracking reports.

The landlord provided two Canada Post receipts and the landlord's agent confirmed both tracking numbers verbally during this hearing. In accordance with sections 89 and

90 of the *Act*, I find that both tenants were deemed served with the landlord's application and first evidence package on February 14, 2023, five days after their registered mailings.

The landlord's agent stated that both tenants were served with separate copies of the landlord's second addendum evidence package on February 10, 2023, by way of registered mail. She said that the tenant was served at the rental unit address. She claimed that tenant DM was served at her residential address, which was provided by the tenant to the landlord's agent, by text message on February 9, 2023. She said that the mail was refused by the tenant and the mail was ready for pickup by tenant DM on February 14, 2023. She stated that the landlord did not provide a copy of the text message from the tenant or the Canada Post receipts or tracking reports.

The landlord's agent provided two Canada Post both tracking numbers verbally during this hearing. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's second addendum evidence package on February 15, 2023, five days after their registered mailings.

The landlord's second addendum evidence package was served late on February 10, 2023, which is not within one day of February 8, 2023, as required by Rules 10.2 and 10.3 of the RTB *Rules* for an expedited hearing. The landlord did not explain why this evidence was served late. However, I find that the evidence was only served one day late, and the tenants had sufficient time to respond, as they had up to two days prior to this hearing, as per Rule 10.5. Therefore, I considered the landlord's second addendum evidence package in this decision.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the name of tenant DM to remove the word "cosigner" as her surname. The landlord's agent requested this amendment during this hearing. She said that the landlord wanted to indicate that this was a description of tenant DM, who is a co-signor for the tenant, and is also named as a tenant on the tenancy agreement. I find no prejudice to either party in making this amendment.

Issues to be Decided

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

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agents 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's agent stated the following facts. This tenancy began on November 1, 2021. Monthly rent in the current amount of $1,522.50 is payable on the first day of each month. A security deposit of $750.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord's agent testified that on November 24, 2021, the tenant committed the first breach, pursuant to section 17 of the tenancy agreement, as per page 50 of the landlord's evidence.

Landlord SH testified regarding the following facts. An email request was made by the manager, regarding the breach, on February 15, 2022, as per page 49 of the landlord's evidence. A 24-hour notice was given to the tenant on February 16, 2022, at page 45. On February 17, 2022, the first breach occurred, pursuant to section 17 of the tenancy agreement, at pages 46 to 48. On January 23, 2023, the second breach of section 17 of the tenancy agreement was noted at pages 41 to 43. An email regarding the manager's experience from January 20, 2023 was provided. On January 24, 2023, the third breach, pursuant to section 17 of the tenancy agreement, was provided at pages 35 to 38. A One Month Notice to End Tenancy for Cause, dated January 24, 2023 ("1 Month Notice") was issued to the tenant at pages 26 to 28. The proof of service for the 1 Month Notice, which was on January 24, 2023, was provided at pages 29 to 33. An email from another tenant was provided at pages 18 to 19, regarding the tenant who saw a woman in the hallway, a racial slur was uttered by the tenant, and the building manager verified that it was the tenant. There have been threatening and racial text messages at pages 20 to 24. There is a proof of service for the landlord's second addendum evidence package. There are text messages at pages 7 to 19 of the landlord's second addendum evidence package. Landlord KT and landlord AT live in the same complex as the tenant.

Landlord KT testified regarding the following facts. The text messages are the reason that the landlord is seeking an order of possession and an early end to tenancy against the tenant. There was a noise complaint, landlord KT went to knock at the tenant's

rental unit door, and the tenant was screaming, yelling, and not answering her door. Landlord KT called the police, and it was clear that the tenant was "incoherent." The police tried to get the tenant to answer her door and then they entered the tenant's rental unit. There are racial text messages regarding landlord KT's wife, who is landlord AT. The text messages got worse. The tenant said that her Jamaican boyfriend was a convict and he would "shoot" landlord KT and "cut his throat." The tenant provided her boyfriend's "rap sheet," invited landlord KT over, and sent pictures of her boyfriend to landlord KT. There were physical threats and voicemails with racial slurs regarding landlord KT's wife. The tenant was asking people to have sex with landlord KT's wife. The worst text messages were threatening to shoot landlord KT and slit his throat. Landlord KT is fearful for himself, his wife, and his 18-year-old daughter, who all live together. Landlord KT is also fearful for other tenants at the property. The Arbitrator can read the text messages provided by the landlord. The text messages from the tenant go on for a couple of days, and then stop, and then start again. If landlord KT puts anything on the tenant's door, then it starts again.

Landlord KT stated the following in response to my questions. The landlord cannot wait for the effective date on the 1 Month Notice to take effect on February 28, 2023, because the landlord does not know if the tenant will leave then. There were no police reports provided by the landlord, as evidence for this hearing. The landlord has the file numbers for the police incidents. The police told the landlord verbally, that they will not provide a report to the landlord because the case against the tenant is still open, since she "slapped" a police officer.

Landlord AT testified that she was working at the property, and she was scared that the tenant would say something or do something to her.

Analysis

Burden of Proof

During this hearing, I informed the landlord's agents that, as the applicant, the landlord has the burden of proof, on a balance of probabilities, to present and prove this application, claims, and evidence. The landlord's agent affirmed her understanding of same. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide sufficient evidence of its application, in order to obtain an order of possession against the tenants.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord's agent testified that this application package was served to the tenants, as noted above. The landlord received a four-page NODRP document 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's agents that I had 30 days to issue a written decision after this hearing. They affirmed their 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 this 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 its application, since it chose to file this application on its 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's agents did not sufficiently present or prove the landlord's 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.*

This hearing lasted 43 minutes and only the landlord's agents attended this hearing, not the tenants. I provided the landlord's agents with ample time during this hearing to present the landlord's application, submissions, and evidence. I provided the landlord's agent with additional time during this hearing to look up information, as per her request, since she said that she did not have the registered mail service information and evidence package names or page numbers information in front of her.

The landlord's agents did not sufficiently review or explain the landlord's documents submitted for this hearing. They referenced providing letters, text messages, and emails, along with multiple page number ranges, but did not sufficiently explain these documents in specific detail during this hearing. They asked me to read the text messages on my own, rather than explaining specific details in the text messages and how they are relevant to this application. They referenced repeated breaches of section 17 of the tenancy agreement, but did not explain what these breaches were, what this section says, or how it is relevant to this application.

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 o 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's agents did not testify about which one of the above parts of section 56(a) of the *Act*, were relevant to the landlord's application.

Residential Tenancy Policy Guideline 51 states the following, in part (my emphasis added):

> 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 take effect.

The landlord did not produce any police officers to testify at this hearing, as noted above in Residential Tenancy Policy Guideline 51. The landlord did not provide police reports or police statements, indicating that the police were called regarding the tenant or that the tenant "slapped" a police officer, as claimed by landlord KT in his testimony. Landlord KT claimed that the landlord only had police file numbers, which he did not provide in his testimony. I informed him that I did not have access to the police database to access any police file numbers.

Landlord KT claimed that the police do not provide police reports to parties. When I asked him whether the landlord made any freedom of information act requests for the police reports, he then claimed that the case was still open, so the police verbally told him that no reports could be provided. The landlord did not provide documentary evidence regarding any requests made by the landlord for police reports, police witnesses, or police statements.

I attach little weight to the redacted emails, text messages, and letters from unnamed individuals, submitted as evidence by the landlord. The landlord has removed the names and identifying information from the above documents, so that the author cannot be identified. The landlord's agents did not sufficiently reference or explain these documents during this hearing, nor did they indicate why the documents were anonymized. I find that anonymous documents may not be fully relied upon owing to the high standard of procedural fairness owed to tenants facing an expedited hearing for an early end to tenancy.

Accordingly, without the authors of the above redacted documents in attendance to testify as witnesses at this hearing and without the names of the authors having been

supplied by the landlord's agents at this hearing, there would be a fundamental denial of natural justice if I were to attach full weight to allegations from unnamed individuals. The tenants are entitled to know the case against them, so as to enable them to properly respond to the landlord's allegations. I have also considered the testimony of the landlord's agents at this hearing.

The landlord did not provide audio or video recordings, as noted above in Residential Tenancy Policy Guideline 51, regarding the incidents described by the landlord's agents. Landlord KT referenced "voicemails" involving racial slurs and physical threats in his testimony, but the landlord did not provide these voicemails as evidence for this hearing.

The landlord had ample time to provide sufficient evidence prior to this hearing, as this application was filed on February 6, 2023, and this hearing occurred on February 27, 2023.

I find that the landlord failed to provide sufficient testimonial and documentary evidence to prove this application, as per section 56 of the *Act* and Residential Tenancy Policy Guideline 51, as noted above. I find that the landlord failed to provide sufficient evidence to demonstrate the urgency of this situation or that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord submitted a 1 Month Notice as evidence for this hearing. The landlord's agents did not review the details on the notice, including the reasons it was issued to the tenants. Landlord SH only indicated the date the notice was served to the tenants. The landlord's agents did not indicate the effective move-out date on the notice, until I specifically asked landlord KT about it.

I find that the landlord can wait for the 1 Month Notice to take effect on February 28, 2023, the day after this hearing on February 27, 2023. The landlord provided a copy of an email, dated February 10, 2023, from the tenant to the landlord, stating that the tenant was moving out of the rental unit on February 28, 2023.

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

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the $100.00 fling fee from the tenants. This claim is also dismissed 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 28, 2023

Residential Tenancy Branch