



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0943151 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

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

- An order for early termination of a tenancy pursuant to section 56

The agent PS attended with the landlord (“the landlord”). SD provided affirmed testimony as a witness for 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 with the Notice of Hearing and Application for Dispute Resolution by personal service to the tenant on January 31, 2023.

The landlord provided a witnessed Proof of Service of Expedited Hearing in the RTB form.

In consideration of the landlord's evidence, I find the landlord served the tenant effective on January 31, 2023, with the Notice of Hearing and Application for Dispute Resolution in compliance with the Act.

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 stated as follows in their written application:

We signed a lease with [LD], the original tenant. [The tenant] and a group of other individuals moved into the unit around March of 2022, kicking [LD] out of the unit.

The landlord testified as to the particulars of the tenancy with LD:

| INFORMATION | DETAILS |
|--|---|
| Tenancy Agreement | No agreement, tenant moved in without landlord's permission and in May 2022 forcibly removed person with who landlord had an agreement |
| Type of Tenancy | Month-to-month |
| Beginning Date | March 1, 2022 |
| Vacancy Date | ongoing |
| Rent payable on first of month | \$1,200.00 |
| Security deposit | \$600.00 |
| Condition Inspection Report on Move-In | No |
| Arrears of Rent | none |

The landlord testified as follows:

The Surrey RCMP executed 3 drug warrants on the Property (Jun/02/22, Jan/11/23, Jan/20/23). There has been a total of 2.7kg of drugs, 1 loaded rifle with an illegal magazine and a shotgun found along with a large amount of stolen bikes. The Tenants have put the other tenants of the home as well as our property at serious risk

The agent presented their witness, Sgt. SD from the Surrey RCMP (Whalley) who confirmed that they wrote the email submitted in evidence dated January 24, 2023 and that 3 different search warrants were executed at the rental unit property as follows:

1. Surrey RCMP file number 2022-79274 / June 02 2022, Surrey RCMP drug warrant execution. 650 grams of drugs recovered and a loaded rifle with an illegal magazine.

2. Surrey RCMP file number 2022-189679 / January 11 2023, Surrey RCMP drug warrant execution.
1.7 Kilos of drugs recovered and a shotgun found.
3. Surrey RCMP file number 2023-10756 / January 20 2023, Surrey RCMP drug warrant execution. 350 grams of drugs recovered.

The landlord requested an Order of Possession.

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.

I find the cumulative effect of the tenant's actions to amount to significant interference and unreasonable disturbance.

I find the landlord provided credible testimony and sufficient supporting evidence from the witness. 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 landlord by the presence of loaded firearms 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.

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 10, 2023

Residential Tenancy Branch