



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

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.
- Reimbursement of the filing fee pursuant to section 72.

The landlord and agent NB attended the hearing (“the landlord”). The tenants joined the hearing 19 minutes after it started.

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. I explained the hearing and settlement processes, and the potential outcomes and consequences, to all parties. All parties had an opportunity to ask questions, which I answered.

Service

No issues of service were raised. All tenants acknowledged receipt by personal service of the Notice of Hearing and Application for Dispute Resolution.

I find the landlord served the documents upon all tenants in compliance with the Act.

The tenants did not submit documentary evidence.

Settlement with Tenants CR and JP

Before the conclusion of this hearing, two of the tenants, CR and JP, agreed with the landlord to settle this application. The parties achieved a resolution of their dispute.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order. This settlement agreement was reached in accordance with section 63.

Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a Decision:

The parties agreed as follows:

- 1) The tenancy between the parties will end at 1:00 PM on April 30, 2023, by which time the tenants and any other occupants will return vacant possession of the rental unit to the landlord.

In support of the agreement described above, the landlord is granted an Order of Possession effective 1:00 PM on April 30, 2023, and after service on the tenants. The landlord may serve and enforce this Order if the tenants fail to move out as specified above.

Should either party violate the terms of this agreement, the tenancy agreement, or the *Act*, it is open to the other party to take steps under the *Act* for an appropriate remedy.

The Order of Possession may be filed and enforced as an Order of the Supreme Court of British Columbia.

The parties are bound by the terms of this agreement, as well as by the terms of their tenancy agreement and the Act.

The Arbitrator reviewed the terms of the settlement with the parties; both parties stated they understood and agreed to the terms.

Based on the above, I find that all matters between these parties (tenants CR and JP, and landlord) raised in this application are resolved pursuant to the above agreed terms.

I now turn to the application against the remaining tenant, JA.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and reimbursement of the filing fee?

Background and Evidence

Background

The landlord submitted substantial evidence. Not all this evidence is reproduced in my Decision. I reference only key, relevant and admissible facts upon which my findings are based.

The landlord testified that his mother was the owner of the house in which the tenant JA resides. The landlord's mother died on September 28, 2022, leaving a will naming the landlord as her executor. An application for probate has been commenced.

Tenancy Agreement

The landlord testified as follows. His mother verbally agreed the tenant could live in a portion of the house about 2 years ago. The house is no longer habitable as it is not serviced by hydro or water.

JA stated he started renting 2 years ago. The tenant claimed he is paying monthly rent through an account established with the Public Trustee. The landlord had no knowledge of any such rental payments or security deposit.

Landlord's Evidence

The landlord stated the house was home for many "squatters" while his mother was ill and unable to manage her affairs. Considerable damage has been done to the house. The landlord testified to many unauthorized occupants of the building over the years, most of whom have since left.

In his written application, the landlord stated:

The rental units/house are no longer safe for the tenants to live in or for the Landlord to try to manage. The estate of [MS] (the current owner on title [...]) remains in probate. The current Landlord, [NS], is Executor of an estate with no monetary funds available. The integrity of house/property continue to be severely jeopardized by the tenants. Direct power to house has been cut by BC Hydro due to a delinquent acct/ illegal meter tampering.

The landlord submitted evidence which included recent photos of the exterior of the house showing debris scattered over the ground, garbage bags, appliances, motor vehicles, miscellaneous containers, wood, housing components, abandoned furniture, broken tools, and the like. Interior photos show chaotic rooms with heaps of clothing over furniture and the floor. The landlord stated used syringes are part of the debris.

The tenants CR and JP acknowledged the house is no longer serviced by hydro or water. There are no functioning toilets. As stated earlier, they have agreed to move out.

The landlord submitted an extensive written timeline of the events of the occupancy of the house by others and, more recently, by the tenant JA. The tenants initially paid for utilities.

However, over time, representatives of utility companies and the police have been to the house on many occasions. The power was cut off to the house in October 2022 and has never been legally reinstated. The landlord stated he was informed by BC Hydro that the power pole servicing the house was vandalized, damaged, and used to illegally divert power to the house. BC Hydro informed the landlord that because of the vandalism, the tenants cannot have the power reinstated.

The tenant JA “physically and verbally threatened” the landlord and the matter was reported to the police. The landlord provided a police file number.

The landlord testified that in January 2023, the mailbox for the unit has been illegally broken into and the matter is reported to the police. The landlord learned the tenants are continuing to divert power illegally. He submitted photographs of the “Notice to Disconnect”.

JA denied that he is responsible for any of the debris and clutter reflected in the photos or any of the actions complained of by the landlord.

During the hearing, JA asked me if I could help him find housing. He said he was injured in a car accident many years ago and the settlement proceeds are held by the Public Trustee who acts for him. He said he was not able to look for a new place to live because of his disability, a head injury. He appeared to require assistance in locating a suitable place to live and expressed interest in supported living.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the parties’ submissions and documents are

reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

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 if 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:

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.

(emphasis added in bold)

The landlord relied on sections (a)(ii) and (iii). That is, the tenant had:

- (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;

;

After considering the Act, hearing the testimony and reviewing the evidence, I find the landlord has established both grounds, that is, that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant and put the landlord's property at significant risk.

The landlord gave candid, forthright, credible evidence supported in all material aspects by documentary, photographic and witness evidence. Landlord and the witness NB provided a comprehensive timeline leading to the present day. They established the house is uninhabitable because of lack of power and water. I accept the landlord's evidence and find the house is dilapidated and derelict, jeopardizing the health or safety of any occupant. I find the actions of the tenants, including JA, have put the property at significant risk of further decay and disintegration. It is clear to me that all tenants share responsibility and must vacate forthwith because of the unsanitary conditions and risk in which they live.

Considering the testimony and evidence, I find the landlord has met the burden of proof in this matter. I find the cumulative effect of the prolonged behaviour of numerous occupants, including JA, to amount to seriously jeopardizing the health or safety or a lawful right or interest of the landlord and putting the landlord's property at significant risk. I find JA shares responsibility for the illegal diversion of power and the unsanitary and unsightly exterior and interior conditions.

I find that the landlord provided enough evidence that it would be unreasonable to wait for a hearing for a One Month Notice.

In summary, on a balance of probabilities and for the reasons stated above, I find that the landlord's application meets the burden of proof and satisfies all requirements under the 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 have considered the effective date of the Order of Possession and grant the Order effective April 30, 2023, at 1:00 PM when the other tenants have agreed to move out.

In view of the circumstances, I do not make an award for reimbursement of the filing fee.

As I am concerned with the tenant's health, care and safety, I direct the landlord to immediately provide a copy of this Decision and Order against JA by registered mail to the Public Guardian and Trustee as follows:

Public Guardian and Trustee of British Columbia
700-808 West Hastings Street
Vancouver, British Columbia V6C 3L3
Ph: 604.660.4444
Fax: 604.660.0374

Conclusion

Pursuant to the settlement reached (Tenants CR and JP), I grant an **Order of Possession** under section 56 (Early End of Tenancy) to the landlord effective **1:00 PM April 30, 2023**.

Pursuant to my Decision (Tenant JA), I grant an **Order of Possession** under section 56 (Early End of Tenancy) to the landlord effective **1:00 PM April 30, 2023**.

These Orders must be served on the tenants. Should the tenants fail to comply with the Orders, they 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*.

The request for reimbursement of the filing fee is dismissed without leave to reapply.

Dated: March 17, 2023

Residential Tenancy Branch