



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 tenant did not attend this hearing, which lasted approximately 27 minutes. The landlord and his agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. and ended at 9:57 a.m. I confirmed that the correct call-in numbers and participant codes were provided in the notices of hearing. I also confirmed from the teleconference system that the landlord, the landlord's agent, and I were the only people who called into this teleconference.

The landlord and his agent confirmed their names and spelling. The landlord's agent confirmed the name and spelling of the tenant. 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 confirmed that he owns the rental unit. He said that his agent, who is his niece, had permission to represent him. He identified her as the primary speaker at this hearing. The landlord's agent provided the rental unit address.

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 and his agent both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord and his agent. They had an opportunity to ask questions. They confirmed that they were ready to proceed with this hearing. They did not make any adjournment or accommodation requests.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on March 13, 2023, and a notice of hearing was issued by the RTB on March 15, 2023. The landlord was required to serve that notice, the application, and all other required evidence to the tenant by March 17, 2023, as per the RTB email sent to the landlord on March 15, 2023, as noted on the RTB online dispute access site.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on March 17, 2023, by way of posting to the tenant's rental unit door, where the tenant is still residing. The landlord provided a signed, witnessed proof of service with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on March 20, 2023, three days after its posting.

The landlord testified that the police report and fire department report, which were uploaded as evidence by the landlord to the RTB online dispute access site on March 17, 2023, were not served to the tenant. I informed him that I could not consider this evidence at this hearing or in this decision because it was not served to the tenant, as required by Rule 3.1 of the RTB *Rules*. He affirmed his understanding of same.

Issues to be Decided

Is the landlord entitled to an early end to tenancy and an Order of Possession?

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord and his agent 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 testified regarding the following facts. This tenancy began on July 1, 2020. A written tenancy agreement was signed by both parties. Monthly rent in the current amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant and the landlord continues to retain this deposit in full. The tenant continues to reside in the rental unit. The rental unit is the basement suite of a house, where the landlord and his wife live in a separate upper suite of the same house.

The landlord's agent stated the following facts. There has been drug use, noise, and fire hazards in the driveway where the tenant smokes and there is plastic around. The fuse box and breaker have been tripped. The landlord cannot get into the tenant's rental unit to check it. In January 2023, the landlord called the police, they did a welfare check, and the tenant held the door and barricaded himself inside the rental unit. The police finally got inside the rental unit and noticed a foul smell coming from one bedroom. The tenant has not paid rent, but that is not relevant to this application. There is a smoking section outside where the tenant leaves cigarette butts and marijuana joints, which are not extinguished. There is a white substance on the walls and floors, which appears to be from a pill and could be a toxic drug. The landlord provided the tenant's employment letter, indicating that he has ongoing drug use. The tenant lives in the basement and there is a smell of smoke and other substances. In February 2023, the landlord's agent tried to call the tenant, banged on his door and there was no answer. She called her father who came and banged on the tenant's door and the tenant refused access and barricaded himself inside in the rental unit. The police were called and were at the rental unit from 7:00 p.m. to 9:00 p.m., they finally got access, and the tenant said that he was threatened and tried to get her father charged criminally. The tenant has a no contact order against her father. Her father is the landlord's brother-in-law. There have been no charges or disclosure of information, but her father cannot be on the premises while the tenant is there. The next day the police arrived and said that they are not allowed into the rental unit to deal with the fuse box.

The landlord's agent testified regarding the following facts. The smoke alarms went off and the fire department arrived because the tenant burned toast. The fire department provided a report. The landlord is terminally ill. There has been one week of construction sounds and the back windows are left open in the rental unit. The landlord needs proper heat because of his terminal illness. The fans push the smoke smell outside. The tenant is smoking, using drugs, and smoking cigarettes outside. There is paper everywhere, which is fire hazard. This is near the carport. This has caused

significant stress for the landlord and his wife. The tenant is unpredictable, and it is not safe for the landlord and his wife. The police and fire department have told the landlord that they cannot do anything, and the landlord needs to go to the RTB to decide. The landlord went to change the furnace filter in the rental unit in November 2022, and saw a baton with a steel ball. The landlord is not sure whether the tenant will use that baton. The tenant has fights with his girlfriend and gets locked out and the landlord has to keep replacing the keys because the tenant's girlfriend keep taking his keys and throwing the tenant's stuff out, since August 2021. The landlord is unsure if a One Month Notice to End Tenancy for Cause ("1 Month Notice") was given to the tenant to vacate the rental unit. The landlord filed another application in January 2023, and it is on the wait list for a hearing in June 2023, regarding a Ten Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice").

The landlord testified regarding the following facts. The tenant was banging pots and pans all night and could be heard arguing with a woman on the day before this hearing at 1:00 a.m. The landlord is scared and keeps his doors locked 24 hours a day because of the tenant. The tenant is "crazy." The landlord is terminally ill, and the tenant's behaviour has affected his health, causes him stress, and he cannot sleep. There are multiple cars that he sees in the driveway.

The landlord's agent stated the following facts. There are ongoing sounds, construction noises, and dismantling coming from the tenant's rental unit. The landlord is afraid that there are serious damages inside the rental unit because nothing should be dismantled. This is a huge issue on top of the tenant's drug issues. There was a previous tenant that was using drugs in the basement and drug dealers came by to beat him and left him in the driveway because he did not pay the bill to the drug dealers. The landlord is "too trusting of the younger generation." There was a brawl involving the previous tenant and his drug dealers, they hijacked the basement, they beat and dragged the previous tenant to the driveway, the police were called and took him away and he never returned. The landlord saw this happen through the windows.

Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) 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...*

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 tenant significantly interfered with and unreasonably disturbed the landlord and other occupants at the residential property.

The tenant did not appear at this hearing to provide affirmed testimony and the tenant did not submit any documentary evidence for this hearing.

I accept the affirmed, undisputed testimony of the landlord and his agent at this hearing and the undisputed documentary evidence submitted by the landlord. The tenant did not dispute the authenticity or contents of the landlord's documentary evidence.

The landlord provided photographs of the condition of the rental unit, in the outside carport and driveway area, showing cigarette butts all over the ground, a white powdery substance all over the walls, plastic and other flammable materials. The photographs show the fire hazards posed by the tenant at the residential property, where the landlord resides in the upper unit of the same house.

The landlord provided written requests to the police and the fire department for disclosure of their reports, relating to the tenant and the residential property. The landlord provided a copy of a letter, dated May 13, 2022, indicating that the tenant disclosed a substance abuse issue to his employer.

The landlord provided three written witness statements, from the landlord, the landlord's agent, and the landlord's agent's father. All statements document and confirm the above testimony provided by the landlord and his agent at this hearing, regarding the above incidents involving the tenant.

I also find that the landlord's application meets the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord provided sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to take effect.

I find that the landlord provided sufficient documentary and testimonial evidence regarding the urgency and seriousness of this situation. I find that the tenant is causing fire and health hazards for the landlord and his wife at the residential property. I find that the landlord's health is in jeopardy, given that he has a terminal illness, due to the tenant's behaviour. I find that the landlord and his wife live in fear at the residential

property, due to the tenant's behaviour. I find that the above issues have been ongoing since the tenant moved into the rental unit in 2020, it became worse in 2022, and it continues, as recently as the day before this hearing on March 30, 2023. I find that the tenant has not moved out of the rental unit, and he has not corrected the fire, health, or safety hazards at the rental unit. I find that the tenant has not responded to or disputed this application filed by the landlord on March 13, 2023, despite being deemed to have received notice of same.

Although the landlord did not provide sufficient evidence that he issued a 1 Month Notice to the tenant, nor did he provide a copy of same, I find that it would be unreasonable or unfair for the landlord to have to do so, and wait for it to take effect.

During this hearing, the landlord's agent provided the file number for the landlord's other application against the tenant, filed at the RTB. The file number appears on the cover page of this decision. I informed her that the RTB online dispute access site indicates that the landlord filed an application for an order of possession and a monetary order for unpaid rent against the tenant on February 6, 2023, and the RTB hearing date is scheduled for June 1, 2023. While unpaid rent is not relevant to this application, I find that it would be unreasonable or unfair for the landlord to wait for the future hearing date of June 1, 2023 at 9:30 a.m., which is more than 2 months from this current hearing date of March 30, 2023, to attempt to obtain an order of possession against the tenant.

Accordingly, the landlord's application for an early end to tenancy is allowed. The landlord is granted an order of possession effective two (2) days after service on the tenant.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's application is allowed. I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$100.00 from the tenant's security deposit of \$550.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's

security deposit of \$450.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: March 31, 2023

Residential Tenancy Branch