



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

All parties attended and 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.

Neither party made any adjournment or accommodation requests.

Preliminary issues are:

1. *Service*
2. *Settlement Discussions*

1. *Service*

The tenant acknowledged service of the landlord's Notice of Hearing and Application for Dispute Resolution.

I find the landlord served the tenant as required under the Act.

During the hearing, the parties agreed they may serve each other by email at the email addresses on the first page. Each party shall retain a copy of the covering email. Each recipient shall acknowledge receipt forthwith.

2. Settlement Discussions

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.

I explained the hearing and settlement processes more than once, and the potential outcomes and consequences, to both parties. Both parties asked questions, which I answered.

I informed the parties that I make my Decision after the hearing and not during the hearing.

I assisted the parties in efforts to settle the matter.

Settlement discussions were unsuccessful, and the hearing continued to conclusion.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord submitted substantial testimony and supporting documentary evidence. The tenant gave lengthy testimony. The hearing lasted 78 minutes.

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

Contents of this section:

1. *Tenancy*
2. *Events Leading to Application*
3. *Tenant's Testimony*
4. *Summary*

1. *Tenancy*

The parties agreed the tenant's rental of a house began in 2018. Rent is \$750.00 monthly. The tenant did not pay a security deposit.

The landlord purchased the property on February 28, 2023.

The landlord submitted a copy of the signed condition inspection report on moving which indicated the house was in fair to good condition.

2. *Events Leading to Application*

The landlord testified to the events leading to this application:

1. Landlord purchased the property and house on February 28, 2023 so that he could occupy it with his family.
2. Landlord issued a Two Month Notice on February 28, 2023 and tenant was served that day. The tenant has disputed the Notice and a hearing is scheduled.

3. When the landlord purchased the property, there was a vertical wood fence in reasonable condition along the front of the property. The landlord submitted supporting photographs as evidence.
4. On April 7, 2023, tenant removed the fence on front of the property and burnt it in front yard. The landlord submitted supporting photographs showing the front yard with the fence removed.
5. A few days afterward, a neighbour (also a tenant of landlord) sent a picture to the landlord of tenant's fresh graffiti on the side of house.
6. A few days afterward, the tenant removed siding from the side of the house. As evidence, the landlord submitted photographs of the siding in place at the time of purchase and the area without siding.
7. The landlord stated he is afraid of the tenant because of alleged criminal behaviour and did not approach the tenant regarding the damage to the property.
8. However, some days later, the landlord observed a water hose going into the crawl space under the house. In the presence of the police, the landlord obtained entry and discovered the crawl space was wet and "was filled with soaking wet garbage".
9. The landlord observed the yard is "covered with broken glass".
10. The landlord is afraid the tenant will destroy the house if she is not evicted.
11. Landlord believed tenant was intent on destroying the house "before she was kicked out".

Tenant's Testimony

The tenant testified as follows.

1. The landlord's evidence was not true. There is no reason to evict her.
2. The landlord's motive is to "reno-vict" the tenant and re-rent the house for more rent.
3. The tenant has maintained the house properly.
4. The tenant acknowledged she removed the front yard fencing. She had "built a headboard" with it and thrown out unusable parts. The tenant had purchased and installed the fencing and believed she was entitled to it.
5. The tenant denied removing any siding and stated she had no idea what the landlord was talking about.
6. The tenant denied running the water hose into the basement. She has never been down there and has no idea what is there.
7. The landlord lied about the water hose so he could gain illegal entry to the unit. The tenant acknowledged the landlord attended in the presence of the police.
8. The tenant acknowledged there was some broken glass in the yard but said she is not responsible for it, and it is no big deal.
9. The tenant said she has started moving out of the house and has removed the washer and dryer which belong to her.

Summary

The landlord requested an Order of Possession.

The tenant requested the application be dismissed without leave to reapply.

Analysis

Contents:

1. *Credibility*
2. *The Act*
3. *Findings*
4. *Summary*

1. *Credibility*

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth.

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Considering the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, credible, and forthright. The landlord provided consistent, logical, testimony supported by photographs showing the missing fence and siding. The testimony was supported in all material aspects by documentary evidence.

I find the landlord's version of events to be most in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable and likely to have occurred in that place and in those circumstances.

I find the tenant's testimony to be unreliable. I do not believe the tenant's allegations she has no responsibility for the events described by the landlord and the condition of the unit. I find the tenant's explanation to be disingenuous that she believed she had the right to remove the fence, that she did not remove the siding, and she is not responsible for any of the other conditions described by the landlord.

Where their evidence conflicts, I believe the landlord's version of events as supported by convincing documents.

I therefore give the landlord's evidence the greatest weight in reaching my Decision.

2. The Act

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 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 section(s) (a)(i) That is, the tenant had:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

3. Findings

After considering the Act, hearing the testimony, and reviewing the evidence, I find the landlord has established all above grounds and is entitled to an Order of Possession.

The landlord gave candid, forthright, credible evidence supported in all material aspects by photographic evidence and believable testimony. The landlord

provided a comprehensive timeline from the date of his purchase of the unit to the present day.

I accept the landlord's recital of the facts in all aspects. I find the cumulative effect of the tenant's actions and the landlord's allegations to meet the burden of proof under the section(s).

I find the tenant has significantly interfered with or unreasonably disturbed the landlord. I find that since the landlord purchased the property, the tenant has removed the fence and siding, and otherwise damaged the property as alleged by the landlord. I find the police have attended at the unit as the landlord found a water hose leading into the crawl space and reasonably concluded the tenant was trying to flood the crawl space.

The landlord has reasonably concluded the unit is at significant risk of further damage.

Considering the testimony and evidence, I find the landlord has met the burden of proof in this matter.

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

4. Summary

In summary, on a balance of probabilities and for the reasons stated above, I find the landlord's application meets the burden of proof and satisfies all requirements 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 effective two days after service.

Conclusion

I grant an **Order of Possession** under section 56 (Early End of Tenancy) to the landlord effective **two days after service**.

This Order may be filed and enforced in the courts of the province of BC.

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: May 05, 2023

Residential Tenancy Branch