



Dispute Resolution Services

Page: 1

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:

1. An early end to the tenancy and an Order of Possession under Section 56 of the Act; and,
2. Recovery the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, her legal counsel and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord confirmed that she served the Tenant with the Notice of Dispute Resolution Proceeding package for this hearing by using a permitted email address for service purposes on May 1, 2023 (NoDRP package). The Landlord also stated she personally served the NoDRP package on the Tenant. The Tenant confirmed receipt of the NoDRP package. I find that the Tenant was served with the NoDRP package on May 1, 2023, in accordance with Section 89(1)(a) of the Act.

The Landlord stated she served her evidence on the Tenant on May 1, 2, 16 and 17, 2023 by email. The Tenant did not receive the Landlord's emailed evidence. He said his

email account is flooded with emails from the Landlord. He said he has a police file opened for her to stop sending him emails. The Tenant stated he does not need the evidence she said she served on him for this hearing.

The Tenant served his evidence to the Landlord by Canada Post registered mail on April 23, 2023 and May 17, 2023. The Tenant referred me to the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Tenant's evidence was deemed served on the Landlord on April 28, 2023 and May 22, 2023 respectively pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an early end to the tenancy and an Order of Possession?
2. Is the Landlord entitled to recovery the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on December 1, 2017. The fixed term ended on August 31, 2019, then the tenancy continued on a month-to-month basis. Monthly rent is \$3,805.00 payable on the first day of each month. A security deposit of \$1,800.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant signed an Address for Service form #RTB-51 on April 20, 2022. The Tenant stated that the Landlord sends harassing, non-stop emails to him. He has made a police file, as he wants this type of communication from the Landlord to stop.

The Landlord testified that the Tenant damaged the sewage system on the property and now the pump no longer works. She said the Tenant has put in rags or clothing items down the pipes and now sewage is backing up. She stated this has happened many times in the past.

From May 1 to May 7, 2023, the Landlord pointed to some picture evidence about the plugged pipes during this period. The Landlord also pointed to video evidence from December 23, 2021. I reviewed those pictures and videos.

The Landlord testified that she sent 10 Day Notices to every tenant in her residential property by registered mail. Legal counsel for the Landlord submitted that the Tenant has been taking registered mail packages for other tenants out of a shared mailbox.

The Tenant stated that the downstairs tenant is a well-known criminal to the RCMP. The Tenant said he does not steal; he does not have a criminal record.

The Landlord is seeking an early end to the tenancy, and an Order of Possession.

Analysis

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.

Claims under Section 56 of the Act are reserved for those very serious breaches of a tenancy agreement or the Act and require sufficient supporting evidence to prove the landlord's claim. Residential Tenancy Policy Guideline #51-Expedited Hearings (PG#51) assists parties to understand issues that are likely to be relevant when a landlord makes an application requesting an early end of tenancy and an Order of Possession. Section 56 states:

Application for order ending tenancy early

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)*

PG#51 sets out evidence that may support an early end of tenancy claim:

- *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.*

RTB Rules of Procedure 7.4 and 3.10 state:

7.4 Evidence must be presented: *Evidence must be presented by the party who submitted it, or by the party's agent.*

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

3.10.1 Description and labelling of digital evidence: *To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent.*

A party submitting digital evidence must:

- *include with the digital evidence:*
- *a description of the evidence;*
- *identification of photographs, such as a logical number system and description;*
- *a description of the contents of each digital file;*
- *a time code for the key point in each audio or video recording; and*
- *a statement as to the significance of each digital file;*
- *submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and*
- *serve the digital evidence on each respondent in accordance with 3.10.4.*

...

3.10.3 Digital evidence submitted directly to the Residential Tenancy Branch or through Service BC: *Parties who submit digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43).* (emphasis added)

The Landlord had multiple video files but did not upload a completed form #RTB-43 indicating a description of the contents of each digital file, a time code for the key point

in each audio or video recording, and statements as to the significance of each digital file. This information is required.

The Landlord uploaded a large amount of evidence. When I asked for her to point me to the evidence she wanted to rely on, she instead gave me date ranges for events to which she testified. The Landlord did not provide a Digital Evidence Details form which would point to the time codes that were material to her claim. I did search for and review the evidence documents with 'May' in their titles. I did watch the whole video she gave me the name of, but it was not clear how the picture evidence or the digital evidence supported her claim that the Tenant has:

- significantly interfered with or unreasonably disturbed other occupants or the Landlord;
- 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; or,
- caused extraordinary damage to the residential property.

The Tenant stated that he is not happy with the downstairs tenants and if the Landlord had served a 10 Day Notice on them, he would welcome it. The Landlord stated she sent these 10 Day Notices using Canada Post registered mail. Canada Post would leave a notice card in the mailbox for the recipient, and not the registered mail package. The Landlord did not point to any evidence that supported her allegation that the Tenant took the registered mail packages or the Canada Post notice cards from the mailbox.

I find the Landlord has not proven on a balance of probabilities that the Tenant has seriously breached the tenancy agreement or the Act under Section 56(2)(a) of the Act. The Landlord also did not prove that it would be unreasonable or unfair to the Landlord or other occupants of the property to wait for a notice to end tenancy to take effect under Section 47 of the Act. Accordingly, I dismiss the Landlord's application with leave to re-apply.

As the Landlord was unsuccessful in her claim, she must bear the cost of the application filing fee.

Conclusion

The Landlord's application is dismissed with leave to re-apply.

The Landlord is not entitled to recovery of the application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 25, 2023

Residential Tenancy Branch