



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an early end to this tenancy and an Order of Possession pursuant to section 56 as well as to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's evidence however he submitted that the landlord's materials for this hearing however he asked that the materials not be considered because the landlord's materials were submitted late. Two witnesses testified on behalf of the landlord.

Preliminary Issue: Late Evidence on Application for Early End to Tenancy

Residential Tenancy Dispute Resolution Rules of Procedure Rule No. 3 addresses the requirements for the creation of evidence materials to submit to the other party as well as the requirements about what should be provided to the other party, the timeline and other information regarding the provision of evidence or documents to the other party on an application for dispute resolution.

No. 3.2 addresses the provision of evidence relating to an early end to a tenancy.

When a landlord is seeking an early end to the tenancy, the landlord must submit all evidence with the Application for Dispute Resolution, or, when applying using the Online Application for Dispute Resolution, the next day. All evidence to be relied on at the hearing must be served on the respondent with the Notice of

Dispute Resolution Proceeding Package described in Rule 3.1.

While the landlord filed the application for dispute resolution on January 24, 2018 and was provided a hearing date of March 1, 2018, the landlord did not submit evidence for this hearing until February 19, 2018 – significantly after the landlord's application for dispute resolution to the Residential Tenancy Branch and after his service of that original application for dispute resolution package to the tenant. Therefore, the landlord did not submit all of the evidence that he sought to rely for this application to end the tenancy early until approximately 3 weeks after his application was made and served.

I note that the landlord's documentary materials were large and that the assortment of digital and photographic evidence (approximately 150 uploaded photographs and 7 digital voice recordings as well as documentary evidence) provided was unwieldy in that none of the individual materials were labelled. I accept the submissions of the tenant that the landlord's materials were not provided within the timeline accorded under the Act. Further, I accept the tenant's submissions that, due to the amount of evidence provided to the tenant to support the landlord's application, the tenant did not have sufficient time to review the materials to prepare and respond to the landlord's claim. Therefore, I exclude the landlord's evidence submitted February 19, 2018 and after.

I note that the landlord submitted some documentary evidence prior to February 19, 2018 and that the tenant submitted some documentary evidence, as well. However, the landlord challenged the inclusion of the tenant's evidence in that it was also submitted after February 1, 2018. After review of the tenant's evidence and in consideration of the position taken at this hearing by both parties with respect to documentary evidence submissions, I find that the tenant's should also be excluded from this hearing. I will not refer to either party's documentary or digital submissions within my decision except for the materials submitted by the landlord at the time of his original application.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?
Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The parties agreed that this tenancy began on December 1, 2017 and was scheduled for a 1 year fixed term. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The landlord testified that, during the course of the tenancy to

date, the tenant has assaulted an electrician who has come to the property; restricted access to police and fire people attending the unit; threatened to tear down the property; and has received complaints from his downstairs neighbour.

The landlord sought an end to this tenancy relying on the ground that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord (as well as a risk to the property). The landlord sought to end the tenancy early: he submits that it the matter is urgent and that it would be unreasonable and unfair to all involved to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

The landlord (husband) testified that, with respect to the safety of his property – the rental premises – the tenant is tampering with the electrical wiring and taking electrical ‘repairs’ into his own hands. The landlord testified that the tenant continually complains about a lack of heat to the rental unit however the landlord has had the heater and other elements of the heating system checked over more than once. The landlord testified that he has been told there is no problem with the heating for the building or for the tenant’s rental unit. The landlord testified that, while the tenant continues to complain, the tenant will not allow contractors to go inside his rental unit. The landlord stated that the constant nature of the tenant’s complaints about the heat have caused him a great deal of stress and financial cost. The landlord (wife) testified that the tenant regularly communicates with her by text messages. She testified that the texts are very long and very “unreasonable” in content. She testified that the tenant will often send the same long text several times during the course of a day. The landlord testified that she is uncomfortable receiving the messages and does not like to go to the rental unit.

The landlord provided 2 witnesses. One witness (Witness G) was an electrician who had been hired on more than one occasion to attend to the rental unit. He testified that on more than one occasion, the tenant would not allow him to come into the rental unit and check the electrical in the rental unit. He testified that he filed a police complaint as a result of his interaction with the tenant. He testified that he attended to the rental unit and was questioned extensively by the tenant. He testified when he told the tenant that a breaker had been tripped and he needed to reset it, the tenant swore at him and called him a liar. He testified that he was trying to investigate but the tenant tried to block him – the tenant punched him in the shoulder and yelled at him with his finger in the witness’ face. He testified that the tenant was verbally abusive to him and he has heard the tenant be verbally abusive to the landlords.

A second witness for the landlord (Witness M) testified that she also lives in the residential premises. She testified that, since the tenant has moved in, she has

attempted to have reasonable communication with him: she testified that she went to introduce herself and told the tenant she had small children. She asked the tenant if he could keep it down late at night. She testified that he was very angry when she made this request. She testified that a couple days later, she went back to the tenant's unit to apologize but he didn't open the door so she left an apology note for him.

Witness M testified that 2 days after her note to the tenant, he was very loud with music and yelling at 2:00 a.m. in the morning. She testified that she sent the tenant a text message that evening and while he did not respond or turn down the sound, he sent a text message in response the next morning with a variety of excuses for the noise. The tenant testified that she has a stressful job that starts early in the morning and the tenant's noise has impacted both her health and her work attendance. The witness testified that she bought headphones for her children. She also testified that she has called the police more than once with respect to noise from the tenant's unit. Witness M testified that she is going to move out if the tenant is not removed from the premises. She testified that her children are currently staying elsewhere and she is spending most evenings at friends' houses. She testified that the tenant is very aggressive and she is afraid of him.

In response to the landlords' application, the tenant testified that while he is aware that Witness G filed a complaint against him, he has never been contacted by the police or had any follow-up from them. He testified that he was also aware that the downstairs tenant had phoned the police because of a noise complaint. He testified that they have also never pursued any action against him for the noise complaint.

The tenant testified that he doesn't play his music or television loud except for a little bit when he is cleaning. He testified that he listened to music through the television as he doesn't own a stereo so the music is never very loud. He testified that the building is old and that the floors are very creaky – there is nothing he can do about that. He testified that he used to talk a bit loudly on late night phone calls but he has stopped making calls after 11.00 p.m. because of the downstairs' tenant's complaints.

The tenant testified that he did try to install some electrical himself at the request of the landlord but that he was unable to do so. He testified that he doesn't tamper with the electrical and that the accusation is ridiculous. The tenant testified that there is something wrong with the heat: his bedroom is below freezing at times. The tenant made extensive submissions at this hearing with respect to the issue of heat in his rental unit although he was reminded several times that there is no application with respect to resolving the provision or lack thereof of heat to the rental unit before me.

The landlord testified it is unsafe if the tenant continues to reside in the rental unit as a result of his tampering with the electrical wiring and that he will lose his other tenant if the tenant remains. He sought an immediate Order of Possession with an early end to the tenancy.

Analysis

Section 56 (2) of the *Act* permits me to make an order specifying an earlier date for the end of a tenancy than would be the case had the landlord issued a one month notice to end a tenancy for cause, only if I am satisfied that, among other matters, the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and/or seriously jeopardized the health or safety of the landlord or another occupant **and** that 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.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

I find that the testimony of the two witnesses and the response of the tenant are determinative of the issue at the heart of this matter. I acknowledge that the downstairs tenant has been subject to noise disturbance and I find that the disturbance has been significant in that it is regular, ongoing and extreme. I accept the testimony of the tenant with respect to being wakened often and that she and her children are frightened by the tenant's aggressive ways. I find that she is sincere in her testimony that she will vacate her unit if the tenant remains in the premises. I find that her disturbance is significant to warrant the end of this tenancy.

I also accept the testimony of the electrician who testified that, in his attempts to provide paid labour to the landlord, he has been thwarted by the tenant. I accept the electrician's calm and measured testimony despite the fact that he was "assaulted" by his description by the tenant. I find that the tenant alluded to his tampering with electrical wires in his testimony by saying that he attempted to make repairs and failed. I do not accept his testimony in denying that he had tampered with the electrical wires.

With the combination of evidence in the form of candid and clear witness testimony to support his application and considering the concession of the tenant regarding calls to the police and resistance to allowing repairs to his unit, I am satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect both with respect to significant disturbance of another occupant and the landlord as well as a significant risk to the residential property, I grant the landlord's application for an early end to this tenancy. I will issue an Order of Possession and as the landlord was successful in his application, I find that he is entitled to recover his filing fee.

Conclusion

I grant the landlord's application in its entirety.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$100.00 monetary order to the landlord in recovery of the filing fee.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 12, 2018

Residential Tenancy Branch