Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0697418 BC Ltd dba Hotel Bourbon
and [tenant name suppressed to protect privacy]

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.

The tenant attended with the advocates CG and AW ("the tenant"). The tenant TM left the hearing after 5 minutes and the advocates remained for the entire hearing.

JG attended as agent for the landlord ("the landlord"). The landlord testified the landlord personally served the tenant with the landlord's Notice of Hearing and Application; the landlord submitted a signed and witnessed Proof of Service form. The tenant acknowledged receipt. No issues of service were raised. I find the landlord served the tenant as required under the Act.

Preliminary Issue

At the outset, the advocates applied for an adjournment of the matter. The landlord did not consent to the adjournment.

The request for the adjournment was heard at the beginning of the hearing and considered below.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for early termination of a tenancy pursuant to section 56

Background and Evidence

The landlord provided uncontradicted testimony that the tenancy began on July 1, 2018. The rent is $538.10 payable on the first of the month. The landlord submitted a copy of the tenancy agreement. About 120 people live in the building which is described by the landlord as being over 100 years old.

The landlord has applied for an early end of tenancy and an order of possession. The landlord submitted considerable documentary evidence including 6 letters of complaint from other occupants of the building about the tenant. The landlord also submitted photographs substantiating the damage done by the tenant to the unit.

The landlord testified about the landlord's claim and summarized it in the Dispute Notice which stated as follows:

> *"tenant removed dropped ceiling frame, fire suppression ceiling tiles and fire alarm. this is a severe fire issue as the tenant is using power tools ie grinders and welding equipment in his room all hours of the day and night. …*
>
> *he has broken out all the windows in his room and windows in the back stairwell of the hotel.*
>
> *he has threatened the staff and other tenants. the police are constantly being called to deal with him. the hotel is losing 2-3 rooms a month due the constant noise from his room.*
>
> *the tenant is constantly using power tools, welding, grinding and cutting metal in his room; making unbearable noise for the rest of the tenants all night and day; which also is a huge risk for fire*

The landlord testified that loud noises from construction tools coming from the tenant's unit has been an escalating issue, sometimes going on all night. The landlord has called the police many times who have removed the tenant from the building. The landlord submitted six months of security reports from staff in the building regarding the tenant's actions and multiple verbal warnings given to the tenant. The landlord has threatened staff with violence many times as well as other occupants who are afraid of the tenant.

Recently, the landlord testified the tenant has seriously jeopardized the entire building by carrying out welding and activities in his unit that emitted sparks, thereby putting the whole building at risk of fire. As well, the landlord stated that the tenant has vandalized his unit as follows:

- He has removed the fire alarm;
- He has removed the fire suppressant ceiling tiles;
- He has various “construction projects” in his room that involved welding and pouring concrete on the floor;
- He has tried to nail a door over the nearby electrical panel;
- He has disabled the sprinkler system.

The “last straw” occurred on February 8, 2020 when the tenant tried to bring a 25’ section of rebar into the building. When stopped at the door, the tenant got cutting tools from his room, cut the rebar into three pieces, and attempted to take them into his unit. When stopped, the tenant “freaked out” and smashed the windows of a vehicle outside. The police were called and apprehended the tenant who was released the same day.

AW, advocate for the tenant, submitted a letter to the RTB on April 2, 2020 signed by AW, a copy of which was not provided to the landlord. The letter stated as follows:

> *I am writing on behalf of a past client of the Downtown Community Courts, Case Management Team (CMT), [tenant]. [Tenant’s] mental health support was being provided by Vancouver Coastal Health staff within his CMT throughout 2019. As Tyrell probations order has now expired, he was discharged from CMT in January, 2020. A referral was completed to a mental health team in the community upon discharge in order to provide ongoing care for him.*
>
> *Unfortunately the community mental health team has not been able to connect with Tyrell. This means he has not had any support to manage his mental health in over two months. This has obviously had a significant impact on his emotional well-being. While we accept many of the incidents cited in his eviction notice occurred prior in 2019, his ability to seek out support has been impaired following his landlord requesting he be evicted from his residence.*
>
> *Staff here at the Downtown Community only became aware of his Dispute Resolution Hearing last week, 27th March, 2020. We are requesting the hearing be postponed in order for us to refer Tyrell to a housing advocate so he can receive an appropriate level of support to properly represent his himself.*

> *We will be happy to discuss our request further on 06th April during his scheduled hearing.*

The advocates for the tenant acknowledged they have no support plan or suggestions with respect to the tenant which involved his safety or that of the other occupants in the building. They stated they attended the hearing so that the tenant would not be alone.

The landlord adamantly refused the request for an adjournment and expressed immediate concern about the tenant's dangerous activities and particularly the possibility of fire in the building.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments from the 1-hour hearing are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

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. In this case, the onus is on the landlord to establish on a balance of probabilities that they are entitled to an order for an early end of the tenancy.

To end a tenancy early, the landlord must prove that the tenant has done something contrary to section 56 **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause ("One Month Notice"). Section 56 of the Act provides as follows [emphasis added]:

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.*

(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
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.

The landlord relied on section 56(2)(a)(i), that is, that *the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.*

I have given significant weight to the oral and written testimony of the landlord and the comprehensive, well organized documentary evidence submitted which supported her testimony.

The landlord gave candid, forthright, credible evidence establishing that the tenant increasingly engaged in activities that caused disturbance to other occupants and have escalated to actions putting the building at risk of fire, such as removing the unit's fire alarm and fire suppressant ceiling tiles. The landlord was believable in describing the verbal threats the staff of the landlord and other occupants have endured.

I believe that the landlord has valid reasons for her concerns about the tenant's activities causing a fire. The pictures submitted by the landlord clearly show the tenant's vandalism of his unit and his removal of fire warning/prevention items as a result of which the sprinkler no longer worked.

I believe the landlord's testimony that the occupants of the building have endured escalating noise and are afraid of the tenant causing vacancies.

Unfortunately, the tenant's advocates had no suggestion of how the matter could be resolved. As the tenant left the hearing shortly after it started, the tenant made no submissions.

Application for Adjournment

The tenant's advocates requested an adjournment but presented no reasons and did not offer any interim proposal.

Rule 7.9 of the RTB *Rules* sets out criteria for consideration for applications for adjournment:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

I have considered the submissions of the parties and find there is low likelihood of the adjournment resulting in a resolution. I find the tenant had adequate notice of the hearing and enough time to seek advice. I conclude that the tenant waited until a few days before the hearing to seek advocacy; this was intentional and neglectful and show lack of attending to the seriousness of the matter in a timely manner. I find that the adjournment is not necessary to provide a fair opportunity to the tenant to be heard as he was adequately represented by two competent professionals at the hearing. I find there is no prejudice to the tenant in denying the application for an adjournment.

I therefore dismiss the tenant's request for an adjournment

Conclusion

On a balance of probabilities and for the reasons stated above, I find that the landlord's application satisfies all requirements under section 56(2)(b) of the *Act*. I find that the landlord provided sufficient evidence that it would be unreasonable to wait for a hearing for a One Month Notice, as the testimony and evidence presented by the landlord demonstrated a significant risk of fire in the building in which the unit is located. I find it would be unreasonable and unfair to the occupants of the building and the landlord to wait for a hearing.

Accordingly, I allow the landlord's application for an early end to this tenancy and an order of possession will be issued effective on two days notice.

Conclusion

I grant an **order of possession** to the landlord effective **two days** after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order 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*.

Dated: April 06, 2020

Residential Tenancy Branch