



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Canamex Holdings Ltd.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes **ET, FFL**

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;
- Authorization to recover the filing fee for this application pursuant to section 72.

GM, lawyer, and SRM, agent, attended for the landlord (“the landlord”). The landlord had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The landlord testified that the landlord sent the Notice of Hearing and Application for Dispute Resolution to the tenant by email sent by the landlord’s lawyer to the tenant’s lawyer on May 7, 2020. A copy of the cover document was submitted as evidence.

The landlord also submitted a signed and commissioned Affidavit of a Process Server which stated that copies of the documents were attached to the door of tenant’s residence on May 7, 2020, thereby effecting service under section 90 on May 10, 2020.

Considering the uncontradicted evidence of the landlord and the documents submitted, I find the landlord served the tenant on May 10, 2020 pursuant to the Act.

The landlord withdrew the request for reimbursement of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for early termination of the tenancy pursuant to section 56?

Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The tenancy began on June 1, 2015. The rent is \$773.00 payable on the first of the month. At the beginning of the tenancy, the tenant paid a security deposit of \$350.00 which the tenant holds. The landlord submitted a copy of the tenancy agreement. The unit is in an 8-unit building.

The landlord has applied for an early end of tenancy and an Order of Possession. The landlord submitted well-organized documentary evidence including a written, indexed brief with key documents attached.

The landlord summarized the history of the tenancy as follows:

1. The tenant and occupants created considerable disturbance to people in the building as a result of which the landlord issued a One Month Notice; a Decision and an Order of Possession was issued by the RTB on March 13, 2020. Reference to the file number appears on the first page.
2. Because of the State of Emergency, the landlord has been unable to enforce the Order of Possession.
3. While the tenant vacated the unit after the issuance of the Order of Possession, unauthorized occupants continue to live there. The landlord is uncertain how many people are in the unit.
4. The occupants are believed to engage in trafficking in illicit drugs; one has a pit pull which is believed by other occupants in the building to be dangerous.
5. All occupants of the building have complained to the landlord about the situation in the unit; occupants of three of the eight apartments in the building have moved out and the landlord believed the remaining occupants will vacate. The landlord cannot rent out the vacant apartments if the unit is occupied.
6. The landlord testified that complaints about the unit include the following: all-night noise, false fire alarms resulting in attendance of fire crews, multiple incidents of violence among the occupants of the unit, many calls to the police,

attendance by police on multiple occasions, threatened violence to occupants of other units, and other safety concerns.

The situation escalated after the tenant vacated in April 2020 following the granting of the Order of Possession, with violence among occupants of the unit, disregard for the safety and quiet enjoyment of other people in the building, ongoing activities believed related to drug dealing, and heightened law enforcement involvement.

The landlord submitted a copy of a letter dated May 6, 2020 from HF, occupant of one of the apartments in the building. The letter stated in part:

I am writing in regards to the tenants that are squatting at the back of the property [in the unit]...

The occupants [in the unit] have repeatedly caused noise ie yelling, banging and crashing. The other tenants have called the police and you may reference the file numbers [three file numbers provided].

Also on April 1st the same occupants were intoxicated and hit one of the neighbour's car ...

The occupants have many guests over and one guest in particular has a dangerous dog. There is a high suspicion of illegal drug use.

We have had 2 false alarms pulled since they have been here and last week the female occupant of [the unit] tried to enter the front common area of the building.

Just recently this week the police were called for another domestic violence dispute between them where they were [...] badly injured.

Could you please pass this case over to a lawyer so we may all live in peace.

The landlord said he had called the police “maybe 20 times” and was told the police cannot take steps to evict the occupants.

The landlord expressed his opinion that “it was dangerous to wait” to enforce the previous Order of Possession, that there is an immediate risk to health and safety of the building's occupants, and all occupants are expected to vacate the building if the situation is not remedied.

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 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.

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.*

Policy Guideline 51 – Expedited Hearings provides guidance on applications of this nature.

To grant an order 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 primarily 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 the landlord's testimony.

The landlord gave candid, forthright, credible evidence establishing that the tenant increasingly engaged in activities that caused disturbance to other occupants. These activities have escalated to actions putting occupants at risk through threats of violence and fear of safety. The landlord was believable in describing the situation, his feelings of powerlessness to alleviate the situation, his frustration in reaching out to law enforcement for remedies, his concern for the occupants of the other units who remain, and his expectation that the building may soon be empty of lawful tenants.

I believe the landlord's testimony that the occupants of the building have endured escalating noise and violence in the unit and have well-founded fear for their safety. I find they have serious loss of quiet enjoyment of their apartments, both before and after the Order of Possession was granted.

I believe that the landlord has valid reasons for concerns about the tenant's (or occupants') activities causing a violation of the safety of the tenants in the other units. It is credible and reasonable that the people who live in the remaining four units are afraid for their safety. It is believable that the remaining tenants will vacate the unit if the violence, chaos and activities (possibly involving illicit drugs) originating with the unit are not resolved.

However, this is a *two-part* test and the landlord must prove *both* parts.

On a balance of probabilities and for the reasons stated above, I find that the landlord's application satisfies both requirements under section 56(2)(b) of the *Act*. I find that the landlord provided enough evidence that it would be unreasonable to wait for the Order of Possession granted March 13, 2020 to be enforceable, as the testimony and evidence presented by the landlord demonstrated a significant risk to the health and safety of the residents of 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 the Order to be enforceable.

In summary, I find the landlord has met the burden of proof with respect to the second part of the test. That is, I find the landlord has established that it is unfair or unreasonable to wait for the existing Order of Possession to take effect.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order under section 56 of the *Act*.

As such, I grant the landlord's application.

Conclusion

I grant an **Order of Possession** to the landlord effective **two days after service of this Order**. 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: May 25, 2020

Residential Tenancy Branch