# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes ET, FFL
CNR, OLC, LRE, DRI, FFT

Introduction

The hearing of the Landlord's Application for Dispute Resolution (the "Landlord's Application") was originally scheduled to be heard before me on April 21, 2020, at 9:30 A.M. (Pacific Standard Time). The Landlord's Application was filed under the *Residential Tenancy Act* (the "*Act*"), seeking an early end to the tenancy pursuant to section 56 of the *Act*, and recovery of the filing fee.

As stated in the Interim Decision dated April 21, 2020, it became apparent during the original hearing that the parties were also scheduled to attend a different hearing at the same time, before a different arbitrator, in relation to an application filled by the Tenant. For the sake of brevity, I will not repeat in detail here the matters discussed in the Interim Decision, and as a result, the Interim Decision should be read in conjunction with this decision. In the Interim Decision I ordered that the Tenant's Application for Dispute Resolution (the "Tenant's Application") be joined with the Landlord's Application so that the matters could be heard and decided together before me. In their Application the Tenant sought

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice");
- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit;
- To dispute a rent increase, and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing the original hearing was convened on April 21, 2020, for the purpose of hearing the Landlord's Application and was attended by the Landlord, the Tenant, and the occupant S.O., all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In the original hearing convened on April 21, 2020, the Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Landlord's Application and notice of the hearing, as well as all of the Landlord's documentary evidence by registered mail on April 2, 2020, in accordance with the timelines set out in the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") and the sections of the *Act* pertaining to the service of documents. As a result, I accepted all the Landlord's documentary evidence for consideration in this matter and the original hearing proceeded as scheduled in relation to the Landlord's Application.

The original hearing was adjourned and subsequently reconvened by telephone conference call at 1:30 P.M. on April 22, 2020, as explained in the Interim Decision, for the purpose of hearing the Tenant's Application. The reconvened hearing was attended by the Tenant, the occupants S.O. and D.L., as well as the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Rules of Procedure state that the respondent must be served with a copy of the Application and notice of the hearing. In both the original hearing convened on April 21, 2020, and the reconvened hearing on April 22, 2020, the Landlord denied having ever been served by the Tenant with a copy of their Application, notice of their originally scheduled hearing on April 21, 2020, or any documentary evidence.

During the April 21, 2020, hearing, I ordered the Tenant to upload confirmation of service of their Notice of Dispute Resolution Proceeding Package to the file for their own Application by the date and time of the reconvened hearing. During the reconvened hearing on April 22, 2020, I advised the Tenant that no confirmation of service had been provided in accordance with my order. The occupant D.L. testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the original hearing hearing, and all the Tenant's documentary evidence was sent to the Landlord by registered mail on March 20, 2020, at the address for service for the Landlord listed on the 10 Day Notice.

The Landlord denied receipt of this registered mail, stating that they had moved on March 16, 2020. When asked, the Landlord acknowledged that they had not advised the Tenant of the move or their new address until their own Application was served on the Tenant by registered mail on April 2, 2020. However, the Landlord confirmed that they retained possession of and access to the address to which the registered mail was sent until April 1, 2020, and that they attended that address between March 23rd – 26th, and on March 30th and 31st. The Landlord stated that they also checked the mail on those dates and neither the registered mail package nor any notification that registered mail was available for pick-up were there.

Although the Landlord stated that they moved on March 16, 2020, they acknowledged that they retained possession of this address and visited it several times between March 16, 2020, and April 1, 2020. Further to this, the Landlord used this address as their address for service on the 10 Day Notice and the Landlord acknowledged in the hearing that they did not provide the Tenant with an updated address for service until the Tenant received the Landlord's Application and Notice of Dispute Resolution Proceeding Package on April 2, 2020. As a result, I find that the address for service listed on the 10 Day Notice constituted an address for service for the Landlord at the time the Tenant's Application was filed and until the Tenant received the Landlord's Application listing a different address for the Landlord on April 2, 2020, regardless of whether the Landlord resided there or not. Having found that the address for service listed for the Landlord on the 10 Day Notice constituted a valid address for service for the Landlord, I will now turn my mind to whether the Tenant has satisfied me that their Notice of Dispute Resolution Proceeding Package, including a copy of their Application, notice of their original hearing, and their documentary evidence, was served or deemed served on the Landlord at that address in accordance with the *Act*.

When asked to provide the tracking number or a receipt for the registered mail, the Tenant and the occupants stated that they could not locate either the original receipt or any documents with the tracking number. The Tenant and occupants stated that they had contacted the post office in order to obtain this information and were advised that their computers were down and this information therefore could not be obtained in time for the reconvened hearing.

Rule 3.5 of the Rules of Procedure states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and the Rules of Procedure. I advised the Tenant that it was therefore incumbent upon them to retain any documentary or other evidence relevant to

the service of the Notice of Dispute Resolution Proceeding Package, should it be necessary in order to satisfy me in the hearing that the Notice of Dispute Resolution Proceeding Package had been served or deemed served on the Landlord in accordance with the *Act* and the Rules of Procedure.

I advised the Tenant that as the Landlord denied service of the Notice of Dispute Resolution Proceeding Package and they have failed to provide me with corroborating evidence that this was sent to the Landlord by registered mail as described, such as a receipt for the registered mail or the registered mail tracking number, they have therefore failed to satisfy me that Landlord was served with their Notice of Dispute Resolution Proceeding Package in accordance with the *Act* and the Rules of Procedure.

The ability to know the case against you and provide evidence in your defense is fundamental to the dispute resolution process. As I am not satisfied by the Tenant that their Notice of Dispute Resolution Proceeding Package was served on the Landlord, I am not satisfied that the Landlord had an opportunity to know the case against them or to properly provide evidence in their defense. I therefore find that it would be a breach of both the principles of natural justice and the Rules of Procedure to proceed with the Tenant's Application and I dismiss the Tenant's Application in its entirety, with leave to reapply. This is not an extension of any statutory time limit.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided by them in their respective Applications.

Preliminary Matters

When discussing service of the Tenant's Notice of Dispute Resolution Proceeding Package on April 22, 2020, the occupant D.L. became increasingly disruptive and belligerent, shouting, speaking over myself and other parties, refusing to follow direction and refusing to speak respectfully.

Rule 6.10 of the Rules of Procedure states that interruptions and inappropriate behavior at the dispute resolution hearing will not be permitted and that the arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts

inappropriately. It also states that a person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

I advised D.L. that they are not a party to the proceedings and that their behavior is disrespectful and inappropriate. I advised D.L. that if they did not voluntarily leave the proceedings, they would be removed.

At approximately 1:45 P.M. the line from which the Tenant and the occupants were calling was disconnected by them, and it appeared as though they had hung up. The Landlord and I waited a brief period for the Tenant and the other occupant S.O., both of whom were behaving appropriately and respectfully during the hearing, to reconnect to the conference call before proceeding with the hearing in their absence in accordance with rule 7.3 of the Rules of Procedure. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. Although and the teleconference remained open for them to reconnect, neither the Tenant nor the occupant S.O. reconnected. The hearing proceeded in their absence until the it was concluded by me at 1:56 P.M.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act* as the Tenant's Application seeking cancellation of the 10 Day Notice has been dismissed?

Is the Landlord entitled to an Order of Possession pursuant to section 56 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

**10 Day Notice**

The 10 Day Notice in the documentary evidence before me is signed by the Landlord, contains the address for the rental unit, is dated March 6, 2020, has an effective date of March 16, 2020, and states that the reason for ending the tenancy is because the Tenant owed rent in the amount of $600.00 per person as of March 1, 2019, and $500.00 in outstanding utilities as of January 1, 2020.

The Tenant acknowledged in the April 21, 2020, hearing that they personally received the 10 Day Notice on March 6, 2020, as stated in their Application.

As the Tenant's Application seeking cancellation of the 10 Day Notice was dismissed with leave to reapply, I did not accept for consideration any testimony in relation to the Tenant's Application seeking cancellation of the 10 Day Notice or the merits of the Tenant's claims that no rent or utilities are owed.

**Early End to the Tenancy Pursuant to Section 56 of the Act**

The tenancy agreement in the documentary evidence before me from the Landlord is dated March 7, 2019, states that the agreement is between the Tenant and the Landlord, and that rent in the amount of $1,100.00 is due on the first of the month. The tenancy agreement is also witnessed by D.L.

The Landlord stated that they are seeking to end the tenancy early pursuant to section 56 of the *Act* because although only the Tenant is authorised to reside in the rental unit under the tenancy agreement, they have moved in numerous other unauthorized occupants. The Landlord stated that the Tenant and occupants have parked a travel trailer on the septic field, which has or could cause serious damage to the septic system, and that the Tenant and the occupants have caused extraordinary damage to the rental unit by removing a toilet and vanity from a downstairs bathroom, taking doors off and propping them against windows, and significantly damaging the floors and drywall.

The Landlord alleged that the Tenant and the occupants have engaged in illegal activity by having drugs in the rental unit and on the rental property and that they have stolen property on the premise. The Landlord also stated that they fear for their own safety due to threats of violence from the Tenant and occupants, as well as aggressive dogs on the property. The Landlord stated that it would be unreasonable to wait for a One Month Notice due to the serious jeopardy the Tenant and the occupants are placing the property in and the safety concerns of the Landlord. In support of their testimony the Landlord submitted several photographs, a witness statement, and various other statements from persons claiming to either have previous knowledge of the state of the property of knowledge of the Tenant and occupants themselves.

The Tenant denied that there are unauthorized occupants in the rental unit and stated that the Landlord was aware that their spouse and family members moved into the home and gave approval for them to do so, as they were previously all friends. The

Tenant and occupants denied that there is any illegal activity occurring on the property or that they have caused any extraordinary damage to the Landlord's property. Although the Tenant and occupants acknowledged removing a toilet and vanity from the downstairs bathroom, they stated that the Landlord gave them permission to do this as the bathroom was not functional prior to the start of the tenancy and the toilet was contaminated with fecal matter. They stated that they have plans to renovate the bathroom so that it is functional again, but the renovations have not yet been completed. The Tenant also acknowledged removing the door to the furnace room but stated it is not damaged and was simply removed to facilitate access and storage. The Tenant denied engaging in any illegal activity and stated that the drug enforcement unit attended the rental unit at the request of the Landlord and found nothing of concern.

The Tenant and occupants denied the Landlord's allegations that they have aggressive dogs on the property and stated that they have not threatened the Landlord. The Tenant an occupants stated that it is the Landlord who is not being respectful, entering their rental unit without permission and failing to give proper notice.

The Tenant and occupants also denied any knowledge that their travel trailer is parked on a septic field and stated that although the Landlord has visited the property on numerous occasions, they never advised them of this or requested that they move it. As a result, the Tenant and occupants stated that the Landlord should not be permitted to end the tenancy pursuant to section 56 of the *Act*.

Analysis

In the April 21, 2020, hearing and in their Application, the Tenant acknowledged personally receiving the 10 Day Notice on March 6, 2020. As a result, I am satisfied that it was served on the Tenant on that date.

As stated above, section 55 of the *Act* requires that I consider if the Landlord is entitled to an order of possession as the Tenant's Application seeking cancellation of the 10 day Notice has been dismissed. Section 55 of the *Act* states that under these circumstances, I must grant the Landlord an Order of Possession if the 10 Day Notice is compliant with section 52 of the *Act*.

Although the 10 Day Notice is signed and dated by the Landlord, contains an effective date and the address for the rental unit, and is in the approved form, I find that it does not contain a valid ground for ending the tenancy pursuant to section 52 of the *Act.* On the 10 Day Notice the Landlord stated that as of March 1, 2020, the Tenant had failed to

pay rent in the amount of “$600/person”. I find that the wording of the form makes it clear that the Landlord is to provide a concrete dollar amount of rent owed as of the specified date, and that this information has a very specific and necessary purpose; to make it clear to tenant(s) exactly how much rent is owed so that they may exercise their rights under the *Act* in relation to disputing the 10 day Notice or paying the outstanding amounts owed. I find that the information provided by the Landlord on the 10 Day Notice is not a concrete dollar amount. I also find that this amount is ambiguous, as it necessitates that the parties agree on the number of authorised Tenants in the rental unit, which they do not. Further to this, the 10 Day Notice states that the amount of rent due is from March 1, 2019, over one year prior to the service of the 10 Day Notice and almost 1 week prior to the start of the tenancy as set out in the tenancy agreement.

Although the Landlord also stated on the 10 Day Notice that the Tenant owed $500.00 in outstanding utilities as of January 1, 2020, the tenancy agreement does not state that utilities are to be paid to the Landlord as part of the tenancy agreement. As a result, I am not satisfied that unpaid utilities constitutes a valid ground to end the tenancy under the tenancy agreement or pursuant to section 52 of the *Act*.

Based on the above, I am not satisfied that the 10 Day Notice complies with section 52 of the *Act*, and as a result, I find that the Landlord is not entitled to an Order of Possession based on the 10 Day Notice pursuant to section 55 of the *Act*. Further to this, as I have found that the 10 Day Notice does not comply with section 52 of the *Act*, which is a requirement for a notice to end tenancy to be valid, I therefore find that the 10 Day Notice is invalid and order that it is of no force or effect. The parties should be aware that this finding has no bearing on whether rent or utilities are owed, as I have made no findings of fact in relation to the payment, or lack thereof, of rent or utilities.

Having made the above findings, I will now turn my mind to the Landlord’s Application. Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim.

The ending of a tenancy, especially pursuant to section 56 of the *Act*, is a very serious matter and for the reasons outlined below, I find that the Landlord’s documentary evidence falls significantly short of establishing or supporting the claims made by them in the hearing and their Application that they are entitled to end the tenancy pursuant to section 56 of the *Act*.

Much of the Landlord's evidence was comprised of statements from other parties not present in the hearing, which I would characterise as references of "bad character". These references of "bad character" appear to have been submitted in an effort to damage the overall reputations of the Tenant and the occupants, as they are not witness statements and do not reference any events having occurred on the rental property or in the rental unit. As a result, I do not consider these references of "bad character" provided by the Landlord as a reliable source of evidence as to whether the Landlord has grounds pursuant to section 56 of the *Act*, to end the tenancy, and I therefore do not find them helpful in this matter. As a result, I have given them no weight.

Although the Landlord stated that the Tenant and occupants have parked a travel trailer on the septic field, which could cause serious damage to the septic system, the Landlord only submitted a photograph of the travel trailer on the property. They did not submit any type of verification that the location at which the trailer is parked in the photograph is in fact the septic field, or any documentation to corroborate their claim that parking such a vehicle on the septic field can or has caused significant damage to the septic system. Further to this, the Tenant and occupants stated that the Landlord visited the property numerous times and never advised them that the travel trailer was parked on the septic filed or asked them to move it, which they would have done. As a result, I am not satisfied that the location of the travel trailer either puts the Landlord's property at significant risk or has caused extraordinary damage to the residential property.

The Landlord stated that the Tenant and the occupants have caused extraordinary damage to the rental unit by removing a toilet and vanity from a downstairs bathroom, taking doors off and propping them against windows, and significantly damaging the floors and drywall. Although the Landlord submitted several photographs in support of this testimony, the quality of the photographs is poor and I find that they show only the general state of the property, which I would describe as cluttered and unkempt, as well as the presence of a toilet and vanity outside on the property, and a two by four propped up against a door. Although the witness statement submitted by the Landlord states that there is significant damage to the property, this statement is not corroborated by any other documentary evidence, such as the photographs submitted by the Landlord. Although the Landlord submitted copies of several message conversations with other people, who state that the property was redone or was previously in good condition, these conversations do no specify when the authors last saw the property, and as a result, I find them of limited assistance in this matter.

In the hearing the Tenant and occupants denied causing extraordinary damage to the property or damaging it in any way. Although the Tenant and occupants acknowledged removing the toilet and sink downstairs, they stated that they had permission to do this from the Landlord as they were not functional and were contaminated prior to move-in with fecal matter. The Tenant and occupants stated that they removed them so that they could repair and renovate the bathroom, with the Landlord's permission, and that the restoration has not yet been completed.

The Landlord bears the burden of proof in this matter, and I find that the documentary evidence submitted by them does not establish, on its own or in light of the contradictory testimony from the Tenant and occupants, that there is significant or extraordinary damage to the property.

The Landlord alleged that the Tenant and occupants have engaged in illegal activity by having drugs in the rental unit and on the rental property; however, they did not submit any documentary evidence to corroborate this claim, other than the general references of "bad character" which I have already found will be accorded no weight in this matter. The Tenants denied engaging in any illegal activity and stated that the drug enforcement unit attended the rental unit at the request of the Landlord and found nothing of concern.

Given the lack of corroborating evidence from the Landlord and the conflicting testimony of the parties, I am not satisfied that the Tenant or occupants have engaged in illegal drug activity in the rental unit or on the residential property.

The Landlord also alleged that the Tenant and occupants have stolen property on the premise, however, the Tenant and occupants denied this allegation and the only documentary evidence submitted by the Landlord in support of this allegation were several photographs of the property and garage, and a generic statement from a third party stating they would like to get a bike back. There is nothing before me linking the items shown in the photographs to illegal activity and I do not find the statement from the third party helpful as it does not state that their bike is on the rental property or in possession of the Tenant or occupants or that it was stolen. Given the lack of corroborating evidence from the Landlord and the conflicting testimony of the parties, I am not satisfied that the Tenant or occupants have engaged in illegal activity by storing stolen goods on the residential property.

The parties agreed that the police attended the property at the Landlord's request but disagreed about whether police attendance was necessary. The Landlord argued it was

necessary for their own safety due to threats of violence from the Tenant and occupants, as well as aggressive dogs on the property and submitted a witness statement. However, the Landlord could not describe the threats to me in the hearing with any level of detail or specificity, and the witness statement says only that "violent threats" were uttered. Tenant and occupants denied uttering any threats. While the parties agreed that the Landlord was initially denied access to the property on the date that the police were called, the Tenant and occupants stated that this was because the Landlord did not give proper notice under the *Act*, which is why they were asked to return the following day by the police. The Landlord denied that proper notice was not given but did not submit any evidence to support their testimony that proper notice to enter the property or rental unit was provided to the Tenant under the *Act*.

The Tenant and occupants also denied that the dogs on the premises are aggressive and the parties agreed that no charges have been laid and that no no-contact orders have been issued. The witness statement says that the Tenant and occupants "had their dogs come run at us to attack us" but this was categorically denied by the Tenant and occupants. The Tenant and occupants acknowledged that their dogs were lose on the property and that they bark but stated that they are not violent and would have been in their kennel if the Landlord had given proper notice to attend the property.

Given the contradictory testimony of the parties and the lack of specificity from the Landlord and witness regarding the threats uttered, I am not satisfied by the Landlord that threats were uttered or that the Tenant's dogs are violent or otherwise unsafe.

Based on the above, I am not satisfied by the Landlord 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, 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, caused extraordinary damage to the residential property, or engaged in any illegal activity on the residential property or in the rental unit. Further to this, even if I had been satisfied on one of the grounds outlined above, which I am not, I am not satisfied that it would be unreasonable, or unfair to the Landlord or other occupants of the residential property under these circumstances, to wait for a notice to end the tenancy under section 47 *[landlord's notice: cause]* to take effect. As a result, I dismiss the Landlord's Application seeking an early end to the tenancy pursuant to section 56 of the *Act* without leave to reapply.

As the Landlord was not successful in their Application, I decline to grant them recovery of the $100.00 filing fee pursuant to section 72 of the *Act.*

Conclusion

The Tenant's Application is dismissed with leave to reapply. This is not an extension of any statutory time period.

I order that the 10 Day Notice is invalid as it does not comply with section 52 of the *Act*. As a result, the Landlord is not entitled to an Order of Possession pursuant to section 55 of the *Act*.

The Landlord's Application seeking an early end to the tenancy pursuant to section 56 of the *Act* and recovery of the filing fee is dismissed without leave to reapply.

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 5, 2020

Residential Tenancy Branch