



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an *Application for Dispute Resolution – Expedited Hearing* by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for an early end of a tenancy and an order of possession pursuant to section 56.

The landlord attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The tenants (“the tenant”) did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 32 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served each of the tenants with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on December 21, 2020 and deemed received by the tenants under section 90 of the *Act* five days later, that is, on December 26, 2020.

The landlord provided the Canada Post Tracking Numbers in support of service and submitted copies of the receipts and tracking documents. The landlord submitted photographs of the envelopes addressed to each tenant with the mailing visible. The landlord testified he spoke to the tenant A.W. on January 15, 2020 who confirmed receipt of the documents. Pursuant to sections 89 and 90 and the testimony of the landlord supported by documents, I find the landlord served each tenant with the Notice of Hearing and Application for Dispute Resolution on December 26, 2020.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The parties entered into a monthly tenancy which started April 15, 2020 and continues. The unit is a detached home. The landlord submitted a copy of the agreement a term of which is that the tenant pays for utilities. The monthly rent is \$2,700.00 payable on the first of the month. The tenant provided a security deposit of \$1,350.00 which the landlord holds.

The landlord submitted considerable oral testimony and supporting documentary evidence in a 32-minute hearing. Not all this evidence is reproduced or discussed here.

The key points of the landlord's testimony are as follows:

1. The tenant is in arrears of payment of BC Hydro in the amount of about \$1,000.00;
2. BC Hydro disconnected the power to the meter of the unit on August 13, 2020 following which the unit has not been lawfully metered; since this time until present, the tenant has been unlawfully bypassing the meter to obtain power from BC Hydro and has used a generator in violation of the terms of the agreement;
3. The landlord repeatedly warned the tenant in writing by letters sent by registered mail to immediately cease the unlawful use of power and to stop the generator use;
4. The landlord believed he may be unsafe in conducting inspections of the unit and two inspections in the presence of the police took place on November 21 and December 2, 2020; these inspections showed continued use of the generator and unauthorized power diversion from BC Hydro;
5. To date, the tenant continued in unlawful use of power and unauthorized use of a generator;
6. As a result of the tenant's unlawful bypassing of the meter to obtain power, BC Hydro cut the power to the street on which the unit is located on December 14, 2020 to determine the source of unlawful power use; the source was identified as the unit;
7. BC Hydro sent a letter to the landlord dated December 15, 2020, a copy of which was submitted, warning the landlord of the unlawful power use;

8. The landlord subsequently consulted with agents of BC Hydro and learned that the unlawful supply of power to the unit potentially endangered BC Hydro workers as well as the occupants of the unit who could be injured; as well, electricity use in non-compliance with codes posed a risk of fire to the unit;
9. The landlord believed the tenant's actions may have resulted in the cancellation of the landlord's insurance;
10. Because of the tenant's failure to comply with the direction of the BC Hydro and the warnings of the landlord, the landlord issued a Notice of Hearing on December 21, 2020 which was served with an evidentiary package upon each tenant as referenced earlier;
11. The tenant has conducted themselves in such a manner that the landlord requested the presence of the police to attend at the unit;
12. The tenant is non-cooperative with the landlord and others; for example, the tenant owed \$1,600.00 in outstanding rent which was finally paid on January 15, 2020; the tenant is in arrears of the gas utility bill in the amount of about \$1,000.00 which remained unpaid; there are unauthorized occupants in the unit and unauthorized motor homes on the property;
13. The landlord warned the tenant many times that eviction proceedings will commence if the tenant does not have the electricity reinstated and properly metered.

The tenant did not attend the hearing.

The landlord requested an Order of Possession.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the submissions and documents are reproduced here. The relevant and important aspects of the landlord's 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*
 - (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.

The landlord relied primarily on section 56(2)(a)(i) and (iii), that is:

the tenant has:

*significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and
put the landlord's property at significant risk;*

Policy Guideline 51 – Expedited Hearing provides guidance on the issuance of Orders of Possessions in these circumstances. The Guideline states in part:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

The landlord gave matter of fact, forthright, and credible evidence well supported by documentary evidence. I have given significant weight to the evidence of the landlord which I found professional and direct. The landlord was believable in describing the actions of the tenant, the failure of the tenant to arrange for the lawful supply of electricity to the unit, and the resultant risk of injury or harm to others including BC Hydro personnel and the unit's occupants, as well as the risk of fire damage to the unit.

I accept the landlord's testimony as credible and reliable. I find the landlord has established significant disturbance to the landlord and others by the unlawful divergence of power, the failure to obtain and pay for power as required under the tenancy agreement, and the resultant risk of injury to occupants as well as fire peril.

I find that the landlord provided enough 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 injury and damage.

On a balance of probabilities and for the reasons stated above, I find that the landlord's application meets the burden of proof and satisfied all requirements under section 56 of the *Act*.

Accordingly, I allow the landlord's application for an early end to this tenancy and an Order of Possession will be issued.

Conclusion

I grant an **Order of Possession** pursuant to section 56 (Early End of Tenancy) to the landlord effective **on two days' notice**. This Order must be served 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: January 19, 2021

Residential Tenancy Branch