Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing. She was assisted by her boyfriend and co-tenant ("**SB**"). The landlord was represented at the hearing by its owner ("**GK**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Spelling of Tenant's Surname

At the start of the hearing, the tenant stated that the landlord misspelled her surname on the application, writing the last letter as an "F" when it should be a "P". The landlord did not object to change in spelling. As such, I order that the spelling of the tenant's surname be changed as indicated. The correct spelling of the tenant's surname is on the cover of this decision.

Preliminary Issue – Service of Documents

GK testified that an employee of the landlord ("**PC**") personally served the tenant with the notice of dispute resolution form and evidence. He was not sure of the exact date this was done. The tenant stated that she received the notice of dispute resolution form from PC but denied receiving any documentary evidence relating to the application. GK insisted it was served. I noted that, contrary to Rule of Procedure 10.9, the landlord did not submit a Proof of Service form confirming service. I asked if PC was available to call into the hearing to confirm what documents were served. I stood the hearing down so that GK could call PC and ask her to attend.

PC called into the hearing and testified that she served the tenant with a three-page government form which notified the tenant of the hearing. I understood this document to be the notice of dispute resolution hearing form. PC testified that she did not serve any

other documents at the time she served the form. She could not recall the exact date she served this form but confirmed that it was in late October 2021.

PC also stated that she understood another employee of the landlord (who no longer works for the landlord) served the tenant with “loose documents” not related to any specific RTB proceeding in either late September or early October 2021. She was not sure what documents these might have been.

The tenant argued that the landlord’s documentary evidence should not be admitted because she was unable to review them prior to the hearing, which made it difficult to prepare for the hearing.

RTB Rule of Procedure 10.3 states:

> **10.3 Serving the notice of dispute resolution proceeding package**
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> The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:
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> - the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
> - the Respondent Instructions for Dispute Resolution;
> - an Order of the director respecting service;
> - the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
> - evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant’s Evidence Relating to an Expedited Hearing].

The landlord received the Notice of Dispute Resolution Proceeding form from the RTB on October 25, 2021. Based on PC’s testimony, I find that the landlord served this notice on the tenant in compliance with Rule 10.3. However, I find that the landlord failed to serve its documentary evidence on the tenant within the required timeframe, or at any point after serving the notice of dispute resolution proceeding form. I do not find that providing a loose collection of documents to the tenant prior to this proceeding being filed amounts to effective service of documentary evidence. The tenant had no way of knowing if those documents related to this application or were of any legal significance whosoever. Indeed, I am uncertain if those documents are the same ones that the landlord provided to the RTB at the time of making this application.

The parties advised me that they are scheduled to appear at another hearing in February 2022 (file number on cover of this decision) relating to an application filed by the tenant to dispute a One Month Notice to End Tenancy for Cause. I suggested that

this application be adjourned to the February application date and heard at the same time as the tenant's application, so as to allow the landlord to serve the tenant with the documentary evidence. GK vehemently opposed this. He made emphatic submissions as to the need to end the tenancy immediately, as the tenant had stopped paying rent, was acting in an illegal manner, and was causing other occupants of the residential property to complain, which was causing him an economic loss.

I advised GK that if the hearing were to proceed today, the landlord's documentary evidence would be excluded. I asked him to confirm he understood that this be the case. He loudly re-iterated his desire to proceed today but did not acknowledge that he understood the landlord's evidence would be excluded. I again tried to confirm he understood the consequences of proceeding today, but he became angry and confrontational and tried to make submissions as to the merits of the case. I advised him that, per his request and the prejudice I understood him to say that an adjournment would cause the landlord, the hearing would proceed today and that he could not rely on the documentary evidence submitted.

Preliminary Issue – Conduct of GK at the Hearing

At the start of the hearing, I explained the speaking order to the parties, advised the parties that I expected them to act in a respectful manner, and not to interrupt one another.

Throughout the hearing, GK was confrontational and was evasive in answering my questions. On multiple occasions, he attempted to raise issues that were either not before me in this application (such as the tenant's alleged non-payment of rent) or were not relevant to the topic being discussed (such as attempting to make submissions on the merits of the application when we were dealing with the procedural issues outlined above). After each instance of this, I explained to GK why the tenant's non-payment of rent was not relevant to his application for an early end to tenancy or that he would have an opportunity to make submissions as to the merits of the application later in the application, and that procedural matters needed to be dealt with first, to ensure there was a fair hearing. As I addressed the issue of service, GK became increasing agitated, demanding that I evict the tenant, yelling loudly, and acting confused as to why the tenant would be allowed to stay in the rental unit given how she had acted.

On more than one occasion, I attempted to explain to GK that the purpose of this hearing was for me to gather information from both sides so that I could determine whether or not the tenant's conduct warranted an eviction. GK continually interrupted me when I tried to make these explanations. He made derisive comments about the tenant, which caused the tenant to speak up to dispute them. This happened on more than once. After the second such interruption, I muted the parties, reiterated my expectation that they do not interrupt me or one another, and then unmuted them.

GK continued to try to make his substantive submissions before I was finished my preliminary questions as to service and the terms of the tenancy agreement. I briefly muted him at least one more time as a result. Eventually, I found it necessary to demand in a forceful manner that GK stop talking. He complied. I then advised him that I would forgo the rest of my preliminary questions given his inability to provide responsive answers and that he could proceed to make his submissions as to the merits of his case.

I allowed GK to finish his submissions (which I will set out below), and then tried to clarify a few points (for example, asking him to specify which “hazardous materials” the tenant had brought onto the property). GK’s answers were often non-responsive and evasive. When I tried to re-state my questions, he would talk over me. On at least one occasion, I muted him so that I could ask my question, and then unmuted him so that he could respond. GK’s responses continued to be less than full, and I declined to ask any more questions or attempt to seek further clarification of his testimony. I should also note that GK delivered most of his submissions at a near-yelling volume and it a very aggressive tone of voice.

Once he concluded his submissions, I thanked him for his submissions, and indicated that I understood his position and repeated an overview of it back to him. He then interrupted me and demanded that I issue an order of possession, given that I understood his position. I clarified that by stating that I “understood” his position for wanting to end the tenancy, I was not saying that he was entitled to an order of possession, but only that I comprehended his side of the argument. I noted that the tenant is entitled to share her side of the story, and that I could only make a decision on this application after having heard what the tenant had to say. He then suggested that I would find in the tenant’s favour because she was crying (which the tenant could be heard doing at points during the hearing when GK was making derisive comments about her). I advised the landlord that I would be making a determination in this case on the facts proven at the hearing, and firmly asked him not to insult me further by suggesting I would determine this case on the basis of something other than its merits.

I then invited the tenant to make her submissions. Within one minute of the tenant starting, GK loudly interrupted the tenant to dispute something she said. I immediately muted the landlord and advised him that he had had an opportunity to speak without interruption from the tenant and that the tenant is entitled to same opportunity. I advised him that I had provided him multiple cautions about his conduct throughout the hearing, and that, in light of his conduct and in light of the fact he has completed his submissions, I would keep him on mute for the duration of the hearing. I did not disconnect GK from the hearing, and he remained on the line for the entirety of the hearing. I did not unmute him.

As a result of GK’s conduct, the hearing exceeded the allotted time by 22 minutes. However, I deemed it was in the interests of the parties to conclude the hearing in a single session rather than adjourn it to a later date.

In my view, GK's conduct at the hearing represents "inappropriate behaviour" referred to in RTB Rule 6.10, and warranted his muting after several warnings. Rule 6.10 states:

> **6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing**
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> Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. 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 should note that GK's conduct is not determinative in this proceeding. He was given an opportunity to make full submissions as to his reasons for wanting to end the tenancy. I will adjudicate his application on the basis of those submissions and the submissions of the tenant.

Issues to be Decided

Is the landlord entitled to end the tenancy early?

Background and Evidence

While I have considered the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement starting April 1, 2021. Monthly rent is $775. The tenant paid the landlord a security deposit of $100, which the landlord continues to hold in trust for the tenant. The rental unit is a room located in a residential hotel. The tenant claims that she was an employee of the hotel. GK claims that the person who purported to hire her did not have the authority to do so. The tenant and SB reside in the rental unit on a full-time basis and have exclusive possession of the unit.

GK testified that the tenant and SB's conduct during the tenant warrants ending the tenancy. He testified that SB does not comply with COVID-19 regulations. He stated that he refuses to show GK proof of vaccination and that he does not wear a mask when he is indoors. The tenant testified that SB was not vaccinated due to "having issues with needles", but that he wears a mask when he enters the hotel and walks to the rental unit. She testified that SB does not go into the hotel bar or restaurant, where proof of vaccination is required.

GK testified that he has had to call the police on numerous occasions due to the tenant and SB loudly arguing. He testified that SB hits the tenant and accused him of domestic

violence. The tenant denied that SB hits her. She did admit to their yelling loudly at one another, but stated that this was due to a confrontation that they had with GK, where he came to the window of the rental unit and screamed at them. After GK left, the tenant and SB fought (verbally) about the incident.

GK also testified he received numerous complaints about disturbances caused by the tenant and SB. The tenant denied that this was possible, as she was on good terms with all but one of the occupants of the hotel and that they never mentioned anything to her.

GK testified that SB has repeatedly acted illegally. He stated that SB stole furniture from the common areas of the hotel, that he stole empty beer bottles from a storage room, that he broke into the restaurant and “stole their stuff”, and that he conducts an illegal business on the residential property, stripping down stolen cables for resale. SB denied each of these allegations. The tenant testified that the furniture the landlord referred to did not belong to the hotel, but rather to a former employee of the hotel, who returned to the hotel after having been locked out by GK to retrieve her belongings. SB helped her carry the furniture to her vehicle.

SB denied stealing the beer bottles or anything from the restaurant. The tenant testified that at the start of the tenancy, when she worked at the restaurant, she was shown where the empty bottles were kept, and knew how to access the area. She testified that she has accessed the area to deposit empty beer cans of her own.

The tenant testified that SB salvages metal and electronics, repairs them, and resells them. She admits that SB stores cable on the property but denies that it was stolen.

GK testified that the tenant stores “hazardous materials” on the residential property and that this has prompted the landlord’s insurer to ask that they be moved. After much questioning (described above) the landlord stated that the hazardous material he was referring to was a full propane tank, and that the tenants store it just outside the window of the rental unit (which is on the ground floor). The tenant did not deny that they stored a propane tank as alleged by the landlord.

Finally, GK testified that SB enters the rental unit through the fire door, which is not permitted and sometime enters and exists the rental unit through its window. SB testified that he does this because the RCMP have advised him and the tenant to avoid GK in order to minimize confrontations. The tenant testified that they have called the police on multiple occasions due to GK harassing and yelling at them. The tenant attributes the animosity GK shows to her to an incident when he accused her of stealing a winning lottery ticket. She denied doing this, and testified that someone else had been charged with the theft, but that this did not change GK’s opinion of her.

Analysis

Section 56(2) of the Act sets out the basis that a tenancy may be ended early. It states:

> **Application for order ending tenancy early**
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> (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:
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> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
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> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
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> (iii) put the landlord's property at significant risk;
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> (iv) engaged in illegal activity that
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> (A) has caused or is likely to cause damage to the landlord's property,
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> (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
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> (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
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> (v) caused extraordinary damage to the residential property, and
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> (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.

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
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> 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.
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> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord bears the burden of proof to show it is more likely than not that the tenant acted in one of the ways specified in section 56(2)(a) of the Act.

RTB Policy Guideline 51 addresses early ends to tenancy. It states:

> 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).
>
> Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications.

There is no documentary evidence before me which corroborates any of the landlord's allegations as to the tenant and SB's conduct. In their testimony, the tenant and SB acknowledge a kernel of truth in the landlord's testimony but deny that their actions were improper, or warrant being evicted for. I found the tenant and SB to be credible witnesses; they were able to explain in detail the circumstances that they understood GK to be referring to, gave measured testimony, admit to parts of his testimony, and explained their actions.

By contrast, GK's testimony was imprecise. He provided few concrete details as to his allegation and resisted my attempts to discover such details. I did not find GK to be a credible witness. Where the testimony of GK and the tenant and SB differ, I find the tenant's and SB's to be more believable.

I accept that the engaged in a yelling match at one point, that they store a propane tank outside the rental unit, that the tenant may have improperly accessed a storage area she was not allow to access, that SB stores a large coil of wire on the residential property, and that SB has entered the rental unit through the window and the hotel through the fire door. Such actions do not meet the level of "very serious breaches" described in Policy Guideline 51. Indeed, some of these actions may not even be breaches of the Act or tenancy agreement at all. I explicitly make no finding on this point, as these actions may be at issue in the February 2022 hearing. It is sufficient for me to find that, if true, the actions admitted by the tenants do not meet the section 56(2)(b) requirement 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."

For these reasons and in the absence of any documentary corroboration of GK's testimony, I find that the landlord has failed to prove that the tenant or SB acted in such a way as to satisfy the requirements of section 56(2) of the Act. GK made a series of bare assertions about the conduct of the tenant which I have found to be unreliable.

Without corroboration in the form of additional witness testimony, police reports, photographs or video, or other documents, GK's testimony alone is not a sufficient basis for ending the tenancy.

I dismiss the landlord's application, without leave to reapply. The tenancy shall continue.

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: November 24, 2021

Residential Tenancy Branch