



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An early end to tenancy because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord, pursuant to section 56; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 11:00 a.m. and ended at 11:50 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by LE (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she served the Notice of Dispute Resolution Proceedings to the tenant in 2 ways. First, she sent a copy, together with related documents to the tenant via registered mail to the tenant’s residence on June 23, 2022. The tracking number for the mailing is recorded on the cover page of this decision. The landlord also posted a copy to the tenant’s door on June 23rd. I am satisfied the tenant was effectively served with the Notice of Dispute Resolution Proceedings on June 26, 2022, three days after it was posted to her door, in accordance with sections 89 and 90 of the *Act*.

This hearing was conducted in the absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to show that the tenancy should end early for an imminent danger to the health, safety or security of the landlord or a tenant?

Background and Evidence

The landlord gave the following testimony. The tenant has been exhibiting erratic behaviour such as barring herself in her unit and not allowing the landlord into the unit. On April 25th, the landlord posted a 24-hour notice of entry for an annual fire inspection. The next day, the notice remained on the door, and nobody had seen the tenant, prompting the landlord to call the police to do a wellness check. Upon arrival, the tenant would not allow the police into the unit as she had purposely barricaded herself within.

The landlord rescheduled the fire inspection for April 27th, but the tenant again refused entry. A letter was sent to the tenant warning her of being served with a notice to end tenancy on April 28th. When the landlord tried to inspect the unit again on May 3rd, the tenant denied access, screamed obscenities at the landlord and threatened them.

The landlord's boss came to inspect the unit at the tenant's request on May 9th, but he was denied access as well. On May 26th, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by posting a copy to the tenant's door. A copy of the notice, entered as evidence in this hearing, provides the same circumstances described above as the reasons for ending the tenancy.

The landlord testified that the tenant has issues with hoarding, causing her to fill her unit with possessions and make it impossible to access it or move around. The tenant is also a smoker and there are concerns that the tenant would not be able to put out a fire with the accumulation of goods around. The landlord doesn't know if the fire alarm is operational since the tenant would not allow the fire inspection company in to test it. Lastly, the landlord testified that the tenant would not be able to get out through her balcony as they were "barricaded" by the landlord.

In evidence, the landlord provided photos of the tenant's unit taken two years ago when the landlord last entered the tenant's unit. The photos depict cigarette butts strewn on the floors, a kitchen, bathroom, living room and bedroom all cluttered with garbage and debris. The landlord testified that she was unable to provide recent photos as entry to the unit was denied.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

it would be unreasonable, or unfair to the landlord, the tenant 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*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).

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In the case before me, the landlord has presented the probability of a risk of danger to the other occupants of the residential property if the tenant's smoking led to a fire. While there is probable cause to end the tenancy under section 47 [landlord's notice: cause], the landlord has provided insufficient evidence to satisfy me there is an imminent danger.

Turning once again to PG-51:

*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. Examples include:*

- A witness statement describing violent acts committed by a tenant against a landlord;*
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;*
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or*
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.*

The landlord provided photographic evidence from 2 years ago indicating the hoarding behavior of the tenant. While I accept that the tenant's refusal to allow the landlord into the suite constitutes a breach of the *Act* and the tenancy agreement, I do not find it serious enough to end the tenancy without providing the tenant the one month for a notice to end tenancy for cause to take effect. Once again, ending a tenancy by seeking an early end to tenancy under section 56 of the *Act* is an extraordinary measure, reserved for the most serious breaches of the *Act* where there is an **imminent** danger to the health, safety or security of another tenant or the landlord. I find the landlord has provided insufficient evidence to establish that this is the case.

The landlord has served the tenant with a 1 month notice to end tenancy for cause and the landlord testified that the tenant did not file an application to dispute it. The landlord is at liberty to seek an order of possession based on that notice to end tenancy in accordance with section 47 of the *Act*. The application for an early end to the tenancy pursuant to section 56 is dismissed without leave to reapply.

The filing fee will not be recovered, as the landlord's application was unsuccessful.

Conclusion

The application 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: July 07, 2022

Residential Tenancy Branch