Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

This hearing on October 04 was adjourned until October 24, 2022. This decision should be read in conjunction with the decision dated October 04, 2022 (the interim decision).

Landlord GL (the landlord) and tenants ME (the tenant) and EY attended the hearings on October 04 and 24, 2022. The landlord was assisted by interpreter YT. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Preliminary Issue – Service

The tenants confirmed receipt of the application for dispute resolution on September 20, 2022.

Based on the tenants' testimony, I find the landlord served the application for dispute resolution in accordance with section 89(2) of the Act.

The October 04, 2022 hearing was adjourned because both parties raised a series of concerns with service. The interim decision states:

> Rule of Procedure 7.9 states:
> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:
> • the oral or written submissions of the parties;
> • the likelihood of the adjournment resulting in a resolution;
> • the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
> • whether the adjournment is required to provide a fair opportunity for a party to be heard; and
> • the possible prejudice to each party.
> Considering that both parties failed to properly serve the evidence for this application, I find it is fair to adjourn this hearing and order both parties to serve all the evidence in accordance with the legislation.
> […]
> Considering the large amount of evidence, including video and audio files, I order the parties to submit written submissions explaining clearly how this application meets all the requirements of the legislation and referencing the evidence.
> I order that the written submissions must be typed, with a font size 12 or bigger and use clear and concise language. **Per Rules of Procedure 3.13 and 3.15, if any evidence document is submitted, it must be submitted in the same package as the written submissions.**
> **Rule of Procedure 3.7 requires the parties to submit the evidence in an organized, clear and legible way:**
> All documents to be relied on as evidence must be clear and legible.
> To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.
> For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".
> **To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.**

All the pages must be sequentially numbered and there must be an index. The parties are allowed to submit handwritten submissions if they do not have access to a computer.
The landlord must serve each tenant no later than 7 calendar days after the date of this decision. The tenants must serve the landlord no later than 14 calendar days after the date of this decision.
[…]
In summary, I order:
1. This hearing will be reconvened in accordance with the Notice of Hearing documents attached to this Interim Decision
2. This is not an opportunity for either party to submit an additional application for dispute resolution to be crossed or joined with this application for dispute resolution currently before me.
3. **The parties must serve written submissions via email explaining clearly how this application meets all the requirements of the legislation and referencing the evidence. The parties must also provide all the submissions and evidence to the RTB.**
4. All the written submissions must be typed, with a font size 12 or bigger and use clear and concise language. If any evidence document is submitted, it must be submitted in the same email as the written submissions, all the pages must be sequentially numbered and there must be an index. The parties are allowed to submit handwritten submissions if they do not have access to a computer.
The landlord must serve each tenant the evidence and submissions no later than 7 calendar days after the date of this decision.
6. The tenants must serve the landlord the response evidence and submissions no later than 14 calendar days after the date of this decision.
7. The proof of services must be submitted to the RTB at the latest three calendar days after the emails were sent.

(emphasis added)

Both parties confirmed receipt of the interim decision on October 05, 2022.

The landlord submitted to the Residential Tenancy Branch (RTB) 7 evidence files on October 11, 56 files on October 17, 2022 and 1 file on October 25, after the hearing. The tenants submitted 79 evidence files on October 17 and 4 files on October 18, 2022.

The landlord confirmed receipt of 63 documents from the tenants. The tenant confirmed receipt of 55 files from the landlord. Both parties affirmed they can “kind of understand the evidence documents”.

The landlord forgot to number all the pages and to submit an index.

I find that both parties failed to comply with the interim decision. I clearly stated that the evidence documents must be served in accordance with the Rules of Procedure.

Based on the testimony offered by both parties, I find they can not properly understand the evidence submitted, as the large number of evidence files not organized, without numbered pages and an index makes it difficult to understand the large amount of evidence submitted. Both parties stated they received a different number of documents than what was submitted to the RTB. To ensure fairness and efficiency, per Rule of Procedure 3.7 and the interim decision, I excluded all the evidence submitted by both parties.

Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of a tenancy and subsequent order of possession?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The application indicates the tenancy started on December 01, 2021. Monthly rent in the amount of $1,700.00 is due on the first day of the month. The landlord submitted this application on September 16, 2022.

The landlord occupies the main floor, and the tenants occupy the basement suite.

The landlord testified that the tenant banged on her door at yelled at her on September 16, 2022. The tenant said the landlord is intentionally making loud noise during the night. The tenant called the police and was informed that the police would not attend. The tenant then banged on the landlord's door because of the constant intentional noise that was emanating from the landlord's unit. The tenant did not yell at the landlord.

The landlord affirmed the tenant is responsible for water damage to the rental unit on July 30, 2022. The landlord served two notices of inspection, the tenant did not authorize her to inspect the rental unit and threatened to physically assault her on August 22, 2022. The police attended and instructed the landlord to contact the RTB.

The tenant stated that he is not responsible for damages to the rental unit and that on August 22, 2022 he did not allow the landlord to inspect the rental unit because she previously inspected the rental unit on July 29 and August 15, 2022. The tenant informed the landlord on August 22, 2022 that there was no change in the condition of the rental unit since August 15, 2022.

The tenant called the police on August 22, 2022 because the landlord insisted on inspecting the rental unit. The tenant provided a police file number recorded on the cover page of the decision. The tenant testified he yelled at the landlord when she tried to forcibly enter the rental unit. Later the tenant said he raised his voice against the landlord and that the landlord yelled at him.

The landlord affirmed that she cannot repair the central vacuum because the tenant did not allow her to enter the rental unit. The tenant stated that he did not allow the landlord to enter the rental unit to inspect the central vacuum because he was busy and he did not provide an alternative date because the landlord did not request one.

The landlord testified the tenant has been filming the landlord since August 06, 2022 and this is a harassment. The landlord called the police because of the tenant's actions. The tenant said that he filmed the landlord to produce evidence for a future RTB hearing regarding a one month notice to end tenancy. The tenant never filmed the landlord with the intention of harassing her.

The landlord affirmed that the tenants' children hit the landlord's dog in June or July 2022 with a stick. The tenant denied the landlord's statement.

The landlord stated that in May 2022 the tenant intentionally parked his car in the front yard to damage the grass. The tenant testified that on May 11 or 12, 2022 he parked his car on the driveway and one wheel of the car was accidentally over the grass.

The landlord is seeking to end the tenancy because the tenant is seeking compensation in the amount of $35,000.00. I immediately informed the landlord that this is not a reason to seek an order for the end of the tenancy.

The landlord said that the tenants manipulate their children to provoke her. The tenant affirmed that his children did not provoke the landlord and that the landlord yelled at his two year old child inside the rental unit.

Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord´s notice: cause] to take effect.

Section 56 (2) of the Act states:

> (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;
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> (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.

Residential Tenancy Branch Policy Guideline 51 explains the importance of the landlord providing evidence that is unreasonable or unfair to wait to end the tenancy with a one month notice:

> **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.
>
> (emphasis added)

The parties offered conflicting testimony about several issues. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on the testimony offered by both parties, I find the tenant banged on the landlord's door on September 16, 2022 at night. The tenant explained why he banged on the landlord's door. The landlord did not submit evidence to prove that the tenant yelled at her and did not call any witnesses. I find the landlord failed to prove, on a balance of probabilities, that the tenant yelled at her on September 16, 2022.

The landlord's testimony about the August 22, 2022 incident was less convincing and detailed than the tenant's testimony. I find the landlord failed to prove, on a balance of probabilities, that the tenant threatened to physically assault her on August 22, 2022. The tenant explained to the landlord that there was no change in the rental unit's

condition since the last inspection on August 15, 2022. The landlord did not provide details about the water damage.

I accept the uncontested testimony that the tenant did not allow the landlord to enter the rental unit to repair the central vacuum.

I find the landlord's testimony about the dog incident in June or July 2022 and the children's manipulation incident, for which no dates were provided, was vague and not convincing. The tenant denied both incidents. I find the landlord failed to prove, on a balance of probabilities, that the tenants' children hit the landlord's dog and that the tenants manipulated their children to provoke the landlord.

The tenant explained that he accidentally parked one wheel of his car over the grass. I find that accidentally parking one wheel of the car over the grass is not a reason to end a tenancy.

As stated in RTB Policy Guideline 51, the tenant's breaches have to be very serious to end a tenancy under section 56 of the Act.

I find that the September 16 and August 22, 2022 incidents, filming the landlord in order to produce evidence for a RTB hearing and not allowing the landlord to inspect the rental unit to fix a vacuum cleaner are not serious and urgent enough to end a tenancy under section 56 of the Act. I find it is not unreasonable or unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act for these incidents.

I am not making any findings about the one month notice to end tenancy served by the landlord.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, the tenants, or someone the tenants had permitted on the property, has engaged in any of the actions of section 56(2)(a) of the Act.

Therefore, I dismiss the landlord's application without leave to reapply.

As the landlord is not successful in this application, the landlord must bear the cost of the filing fee.

Conclusion

I dismiss the landlord's application without leave to reapply. The tenancy continues in accordance with the Act.

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: October 31, 2022

Residential Tenancy Branch