



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

The Landlord seeks an order of possession pursuant to s. 56 of the *Residential Tenancy Act* (the “*Act*”) without issuing a notice to end tenancy.

A.P. appeared as agent for the Landlord. S.A. appeared as manager for the Landlord.

The Tenant did not attend, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the Notice of Dispute Resolution and the Landlord’s evidence was posted to the Tenants door on September 23, 2022. The Landlord provided video evidence to the Residential Tenancy Branch and the Landlord’s agent clarified that the video evidence had not been served, rather still frame photographs of the video had been provided. I find that the Notice of Dispute Resolution and the Landlord’s evidence, excluding the video evidence, has been served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received these materials on September 26, 2022.

Preliminary Issue – Landlord’s Video Evidence

As this is an expedited hearing, Rule 10.3 of the Rules of Procedure applies and requires applicants to serve the Notice of Dispute Resolution and evidence upon which

they intend to rely on the respondent within one day of receiving the Notice of Dispute Resolution from the Residential Tenancy Branch.

I raised my concerns with respect to service of still frames rather than the actual video itself. The Landlord's agent advised that the Tenant had previously posted such content on social media and the Landlord wished to avoid this. I appreciate the Landlord's concern. However, I am also cognizant of the prejudicial impact video evidence may have as it is prone to editing such that the wider context of the incident is not captured. I make this as a general comment and do not suggest that that has occurred here.

The Tenant has the right to review all the evidence the Landlord intends to rely upon, including the video in its entirety, not the snippets within the screenshots provided. This is a basic procedural right required to ensuring a fair dispute process. The other side must know what is alleged, what has been submitted as evidence, and then may provide whatever response they so wish within the context of the dispute.

I am unable to find that the video evidence has been served on the Tenant. As it was not served, I find that it would be procedurally unfair for the Tenant to consider it. As such, it is excluded and shall not be reviewed or considered by me.

Issue to be Decided

- 1) Is the Landlord entitled to an order of possession without issuing a notice to end tenancy?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on October 1, 2019.
- Rent of \$328.00 is due on the first day of each month.
- No security deposit or pet damage deposit was paid by the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord.

The Landlord's agent testified to various incidents involving the Tenant. The earliest comprised of threats issued to staff members in December 2021 and January 2022. The Landlord's evidence includes two incident reports: the first date December 13, 2021 and the second dated January 20, 2022. The first incident describes the Tenant attempting to force entry into an office, staff members holding the door shut due to the Tenants conduct, and the police attending the residential property due to the incident. The second describes that the Tenant again attempted to force entry into an office.

The Landlord's agent testified that the staff member in question has taken a leave and that WorkSafe BC has been involved. The Landlord's evidence includes a copy of the WorkSafe BC inspection report dated August 29, 2022 in which the violence prevention strategy was assessed.

The Landlord's agent further testified that the Tenant had assaulted another tenant within the residential property and that the Tenant had been charged with respect to those incidents. The Landlord's evidence includes a copy of a release order dated August 4, 2022 in which various counts were listed, including assault, assault with a weapon, and uttering threats. These incidents are said to have occurred on July 19, 2022, August 1, 2022, and August 2, 2022. The Landlord's evidence also includes a note from the other tenant indicating that he had been assaulted by the Tenant on August 1, 2022.

The Landlord's evidence includes a One-Month Notice to End Tenancy signed on August 24, 2022. The Landlord's agent indicates that the Tenant had again interacted with the other tenant on August 30, 2022. S.A. testified that the incident took place in the lobby and would have been more serious had he not been there to break up the fight. I am told that the other tenant has mobility issues.

I am advised that the Tenant continues to reside within the rental unit. I am further advised that the Tenant has been recently arrested on or about October 4, 2022, though I am uncertain on the circumstances involving that arrest.

Analysis

The Landlord seeks an order of possession without serving a notice to end tenancy.

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between ss. 47 and 56 is that under s. 56(2)(b) a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline #51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

Based on the undisputed evidence from the Landlord, I find that the Tenant has assaulted the other tenant at the residential property, including most recently on August 30, 2022. This is both support by the documentary evidence provided by the Landlord and the firsthand account of S.A., who had to intervene to prevent the Tenant from attacking the other tenant on August 30, 2022. I find the Tenant's conduct constitutes illegal activity within the context of s. 56(2) of the *Act* and has adversely affected the security, safety, physical well being, and quiet enjoyment of the other tenant. Given the Tenant's past interactions with staff members, I find that it is likely that the Tenant poses a risk to their safety, security, and physical well-being as well.

I accept that the Landlord has served a One-Month Notice, which may militate against a finding that it would be unreasonable or unfair to wait for a notice issued under s. 47 to take effect. However, mere days after the One-Month Notice was issued on August 24, 2022, the Tenant again assaulted the other tenant on August 30, 2022. Given the

Tenant's continuing behaviour since the One-Month Notice was issued, I find that it would be unreasonable and unfair to the other occupants of the residential property, specifically the other tenant, to wait for the notice to take effect.

Accordingly, I find that the Landlord has established that an order of possession is warranted under the circumstances. I grant the Landlord an order of possession effective two days after the Tenant receives it.

Conclusion

The Landlord is entitled to an order of possession. Pursuant to s. 56 of the *Act*, I order that the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving this order.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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 07, 2022

Residential Tenancy Branch