



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on January 3, 2023 seeking an order to end the tenancy on the basis that the Tenant poses an immediate and severe risk to the property, other occupants or the Landlord. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 19, 2023. In the conference call hearing, I explained the process and provided the parties the opportunity to ask questions.

Both the Landlord and the Tenant attended the hearing. I provided both parties the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding and prepared evidence

In the hearing, the Landlord stated that they served the notice of this hearing attached to the rental unit door on January 6, 2023. This was the day after the Notice of Dispute Resolution Proceeding was sent to the Landlord by the Residential Tenancy Branch. The witness that attended the hearing with the Landlord confirmed the Landlord served this document in the manner described.

In the hearing, the Tenant confirmed they received the notice of this hearing in the manner described. From this, I am satisfied the Landlord served notice of this hearing to the Tenant in the required amount of time.

The Landlord provided evidence to the Residential Tenancy Branch. They stated they did not provide copies of the same to the Tenant with the notice of this hearing. The Landlord understood that the Tenant would directly access evidence that the Landlord

uploaded to the Residential Tenancy Branch. They stated they did not have any way of sending a video to the Tenant, one they intended to rely on as evidence in this hearing.

The Residential Tenancy Branch sent information to the Landlord, along with the Notice of Dispute Resolution Proceeding, on January 5, 2023. This included the following documents, excerpted:

- Applicant Instructions for Expedited Hearing

You must submit all evidence that you intend to rely on at the hearing with the Application for Dispute Resolution. Identical copies must be served on all respondents.

You must serve identical copies of evidence on all respondents as soon as possible. How you serve your evidence affects the date it is considered received.

- Residential Tenancies Fact Sheet – Expedited Hearings – RTB-114E

Within one day of the date the Proceeding Package is made available by the RTB, the applicant must serve each respondent separately . . . with the Proceeding Package and copies of evidence submitted with the application. The applicant must submit a proof of service form to the RTB to prove service.

Identical copies of evidence must be provided to the applicants, the respondents and the RTB. Parties should number each page of your evidence package so that all participants in the hearing can follow what is being presented. Photographs should be numbered and include a brief description, for example: "Living room photo 1 – carpet stain." All evidence must be relevant to the Application for Dispute Resolution, reliable, accurate, organized, clear and legible or it may not be considered by an arbitrator.

Provide the Digital Evidence Details and digital evidence to the other party and the RTB.

An applicant must submit copies of all available evidence to the RTB at the same time as the Application for Dispute Resolution. The applicant must serve the respondent with their evidence within one day of the proceeding package being made available. The respondent must serve and submit evidence so that it is received not less than two days before the hearing.

Additionally, the *Residential Tenancy Branch Rules of Procedure* are in place to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. These list relevant points that apply in this situation with the Landlord's Application:

10.3 Serving the notice of dispute resolution proceeding package

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:

...

- 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].

3.10.1 Description and labelling of digital evidence

To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch . . . and be served on each respondent.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party . . . in accordance with the Act or [Rule 10] may or may not be considered depending on whether the party can show to the arbitrator that it was new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

With consideration to the information provided to the Landlord on the expedited hearing process, as well as the *Residential Tenancy Branch Rules of Procedure*, I do not accept the Landlord's documentary or digital evidence. The Tenant in the hearing stated they did not receive this evidence, and I find that to be fact as attested to by the Landlord. For me to consider this evidence would be a breach of the principles of natural justice, procedural fairness, and would be prejudicial to the Tenant who has not had the chance to review the evidence or provide a response.

At the outset of the hearing, I informed the parties that testimony, affirmed under oath, is a form of evidence that I still consider in this hearing. On this basis, I provided each party ample opportunity to make submissions and respond to what they heard from the other party.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession that ends the tenancy for cause by s. 56 of the *Act*?

Background and Evidence

The Landlord provided oral testimony to show how the conduct of the Tenant constitutes a reason to end the tenancy. This shows the following actions of the Tenant:

- the Tenant had been previously evicted elsewhere, and was not forthcoming to the Landlord about this at the start of this tenancy in September 2022
- on the second day of the tenancy, the Landlord received panicked calls from other building residents about “a full-blown domestic dispute” – this got to the point where other building residents were afraid of the Tenant, knowing the Tenant to be the source of the issues in the rental unit property
- on December 12, at approximately 7 or 8pm, the Landlord received calls from other residents: the Tenant was “incredibly intoxicated” and screaming at them
- on this date the Tenant broke the front door glass and was threatening and yelling at the residents in the upper rental units
- the Landlord told those residents to call the RCMP
- the Tenant barricaded themselves in the rental unit and wrote ‘stay the fuck out’ on the window
- the Tenant threw 2x4 lumber into the neighbouring property
- the Tenant called out one neighbour and threatened violence
- in the days after this incident, the Tenant would not answer calls from the Landlord

The Landlord described the local RCMP knowing the Tenant, and being aware of the cycle of behaviour from the Tenant. The Landlord stated the RCMP told the Landlord that they record all incidents with this Tenant. In total, the RCMP were called 4 times since this tenancy started.

After the December 12 incident, the Tenant would not answer calls from the Landlord. Eventually, the Tenant agreed to a move-out from the rental unit, and stated this in an email to the Landlord on December 14. After this, toward the end of December another resident messaged the Landlord describing “racist threats” from the Tenant here.

The Landlord described three other tenants, as well as neighbours and the RCMP, who have the same story about the Tenant's behaviour and actions. The Landlord compared this abundance of evidence and direct statements against that of the Tenant whose version exists as one account versus several that the Landlord had compiled.

The witness for the Landlord who attended described their concerns, becoming aware of issues with the Tenant's conduct soon after they moved from others' accounts. They instruct other residents to tell the Landlord about issues.

The Tenant took issue with the Landlord's description of their eviction elsewhere previously. They described having their application granted in other dispute resolution proceedings. They have a stalker as well as issues with an ex-partner from a previous relationship.

The Tenant described coming home on December 12 to find their front door broken into, and then went outside to ask others how they could not observe that happening. They were distressed – describing their state as having a “mental breakdown” – after this being the second time their home was broken into, and upon learning that their child was transported with a neighbour who was impaired, with their ex-partner. The Tenant described other court cases involving custody.

The Tenant described being at a party where they had some drinks, and some other substance in those drinks caused them to black out and not be aware of their actions. Additionally, they stated the police did not visit that night, and they only interacted with a single officer who visited the next day.

The Tenant's version has it that they were “forced into saying I would move out” by the Landlord, otherwise they would be charged from the December 12th incident. The Landlord's recollection was that the Tenant would quietly and agreeably move out from the rental unit.

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 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 tenancy were given under s. 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.

The *Act* s. 56(2) follows with two criteria. First, as per subs. (1) a landlord must provide the cause for issuing the Notice. Additionally, the evidence must show, as per subs. (2), it would be unreasonable or unfair to a landlord to wait for a set period Notice to End Tenancy to take effect under a different s. of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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 . . .

Above, I excluded the Landlord's documents and video from consideration because of the disclosure issue.

In the hearing, the Landlord described events; however, aside from receiving calls from distressed other residents on December 12th regarding the incident, the Landlord did not provide direct first-hand knowledge of the events. Throughout the hearing, they referred to witness statements and RCMP information, as well as a captured video, but I excluded that material from consideration.

Minus documentary and video evidence to overcome the burden of proof, I find the Tenant has provided an equally plausible version of events on December 12th. There were no witnesses present in the hearing to describe the activity from their perspective. The Landlord described three other residents/tenants, the RCMP, and their own account as weighed against that of the Tenant; however, the other accounts were not, in effect, documented in this hearing.

The Tenant described having a mental break at the time of the incident. The testimony of the Landlord on the Tenant's actions is not sufficient to provide observable, first-hand detail on the actions of the Tenant to describe them as anything other than a mental break. There is no evidence of uttering threats, as such, which was the most serious of the matters involving other residents and neighbours. There was no documented proof of damage at the rental property; although the Landlord's witness described cleaning up glass in the area, this does not rule out the possibility of the damage being caused by others as the Tenant described.

I find what the Landlord presents has not risen to the threshold where an immediate and severe risk to the property or the Landlord, or others, is the reason for ending the tenancy. There is not sufficient evidence of the date in question, which is where the Landlord's Application here seems to lie entirely. There was no evidence of charges from the RCMP, and I cannot uphold an eviction of this type where the Landlord reporting on RCMP comments made to the Landlord directly is proof positive of threats uttered or property damaged.

As per s. 56, I must be satisfied of the two criteria present, listed above. I am not satisfied that the Tenant has done any of the actions listed in subs. (a) (i) through (v); therefore, I am not obligated to consider whether it is unreasonable or unfair for the Landlord to wait for the other means of ending the tenancy with cause.

My reason for this is there is insufficient evidence that there is an immediate danger to the health, safety or security of the Landlord or others. The evidence does not show immediate threats uttered by the Tenant, and there is insufficient evidence to show an *actual* jeopardy to others' health and safety.

In conclusion, I find the Tenant's behaviour does not rise to a level that is sufficient to end the tenancy in this manner. An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant. This method of ending the tenancy is for serious and immediate risk of danger; I do not find that to be present in this case. I find that the evidence and oral testimony presented by the Landlord does not show this to be the case.

I find the Landlord has not proven there is reason to apply for an order that ends the tenancy early by application of s. 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a s. 47 notice to end tenancy.

Because they were not successful in this matter, I make no award for reimbursement of the Application filing fee.

Conclusion

I find the Landlord's testimony does not show the Tenant's actions are an immediate and severe risk to the property or the Landlord. I dismiss this Application for an early end of tenancy and an order of possession for the rental unit, without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: January 19, 2023

Residential Tenancy Branch