



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding LAUREL ROOMS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an order of possession, pursuant to section 56.

The landlord's agent, the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 33 minutes from 11:00 a.m. to 11:33 a.m.

All hearing participants confirmed their names and spelling. The landlord's agent and the tenant provided their email addresses for me to send copies of this decision to both parties after the hearing.

The landlord's agent stated that the landlord company ("landlord") named in this application owns the rental unit. He provided the rental unit address. He said that he is a building manager, employed by the landlord. He confirmed that he had permission to represent the landlord at this hearing.

The tenant affirmed that his advocate had permission to assist him at this hearing. He identified his advocate as the primary speaker for the tenant at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

Both parties were given multiple opportunities to settle this application but declined to do so. Both parties asked that I make a decision regarding this application and confirmed that they were ready to proceed with this hearing.

I repeatedly cautioned the landlord's agent that if I dismissed the landlord's application without leave to reapply, I would not issue an order of possession to the landlord against the tenant, and this tenancy would continue. The landlord's agent repeatedly affirmed that the landlord was prepared for the above consequences if that was my decision.

I repeatedly cautioned the tenant and his advocate that if I granted the landlord's application, I would end the tenant's tenancy and issue a two (2) day order of possession against the tenant. The tenant and his advocate repeatedly affirmed that the tenant was prepared for the above consequences if that was my decision.

Preliminary Issue – Service of Documents

This matter was filed as an expedited hearing under Rule 10 of the *RTB Rules*. The landlord filed this application on January 30, 2023, and a notice of hearing was issued by the RTB on February 2, 2023. The landlord was required to serve that notice, the application, and all other required evidence in one package to the tenant, within one day of receiving the documents from the RTB, as per *RTB Rules* 10.2 and 10.3.

The landlord's agent stated that the tenant was served with the landlord's application for dispute resolution hearing package on February 3, 2023, by way of registered mail, to the tenant's rental unit address. The landlord provided a Canada Post receipt and the landlord's agent confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on February 8, 2023, five days after its registered mailing, to the rental unit where the tenant is still residing. I informed both parties of the above information during this hearing and they affirmed their understanding of same.

The tenant claimed that he did not receive the landlord's application. He said that he was in the hospital and his social worker got the landlord's documents, but he did not

have access to them, while he was in the hospital. He claimed that he knew about this hearing date.

The tenant's advocate said that it was common for paperwork to get lost, as the tenant was in the hospital. She claimed that the tenant was aware that the landlord filed this application and knew about the hearing date.

During this hearing, I informed both parties that the online RTB dispute access site states the following regarding the communication notes relating to the tenant. The tenant's social worker AC called the RTB on February 6, 2023, claiming that the tenant was in the hospital, did not have access to the notice of hearing, and provided information regarding this file number and hearing, since the landlord confirmed they filed for an expedited hearing. On February 21, 2023, the tenant's advocate emailed the RTB twice, claiming that the tenant misplaced, and then found, his notice of hearing paperwork for this hearing.

Although the tenant claimed that he was in the hospital during the above time, he did not provide documentary evidence of same for this hearing. Further, the tenant did not provide an alternate address of service to the landlord. Therefore, I find that the tenant was deemed served at the rental unit address, where he was still residing. I also note that the tenant and his advocate were aware of this application and hearing date, as they both testified during this hearing, and as per the above online RTB dispute access site notes.

The tenant confirmed that he did not submit any documentary or digital evidence for this hearing. The tenant and his advocate asked if they could provide evidence during or after this hearing. I informed them that I would not accept any evidence from the tenant during or after this hearing.

The landlord would not have notice or a chance to respond to the tenant's evidence after this hearing. Further, the tenant had ample time to provide sufficient evidence prior to this hearing on February 23, 2023. The tenant's social worker contacted the RTB on February 6, 2023 regarding this application, the tenant was deemed received with the landlord's application on February 8, 2023, and the tenant's advocate contacted the RTB on February 21, 2023 regarding this application.

Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an order of possession?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent and the tenant agreed to the following facts. This tenancy began on November 7, 2022. Monthly rent in the current amount of \$715.00 is payable on the first day of each month. A security deposit of \$357.50 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord's agent testified regarding the following facts. He received complaints from the landlord's janitor and neighbors in the building. He talked to the tenant regarding loud music being played day and night, and the tenant playing basketball in his rental unit. This is an SRO (single room occupancy) building and the rooms are small, so they require quiet. The neighbors could hear the tenant playing basketball in his rental unit. The landlord's agent left a notice on the tenant's door on January 12, 2023, but the issue was not resolved. There were complaints about construction in the tenant's rental unit. The landlord's agent checked on January 25, 2023, but the tenant was not home. The landlord's agent printed a notice on January 26, 2023, and posted it to the tenant's rental unit door, to do an inspection, but the tenant was home and let him in. Upon inspection, the landlord's agent noticed that the tenant removed the flooring and door frame, relocated the ceiling fixture, there were wires hanging from the ceiling, and the room was damaged. The tenant told the landlord's agent that he renovated the rental unit. The tenant covered the smoke alarm and the sprinkler and told the landlord's agent that there were cameras all over the rental unit and the entire building, so that is why he covered them. The landlord's agent called 911, who came and talked to the tenant, and he resisted, so they took him by force to the hospital.

The landlord's agent stated the following facts. The tenant was released from the hospital on February 13, 2023. The landlord's agent received complaints from February 13, 2023, to now, from the tenant's neighbors. Last night, the tenant was smoking in his rental unit and doing construction there. The landlord's agent told the tenant that this was a non-smoking building. The landlord's agent called the tenant's social worker in the hospital, but they did not get back to him. The landlord's agent does not think it is safe and the rental unit is not liveable, as per the landlord's photographs submitted for

this hearing. There is a gas stove in the rental unit, so it is not safe. The landlord's agent is worried about everything. The tenant needs to leave as soon as possible for his and others' safety.

The tenant testified regarding the following facts. The day that the landlord's agent put the notice on the tenant's door, was when he entered the rental unit, because the tenant cannot lock his door, since there is no lock there. The tenant's door is broken at the bottom, so he had no choice but to fix it, and put it back on its hinges. The rental unit is place is liveable and the tenant can send photographs of it now.

The tenant's advocate stated the following facts. She is familiar with the downtown east side and does work at SRO's. She cannot speak to the safety or the stove issue. The tenant's rental unit is clean, not cluttered. The tenant removed his old flooring and sanded it, and you can see the carpet. The tenant fixed the leak that was not addressed by the landlord. The noise was probably due to the renovations being completed by the tenant in the rental unit. The tenant's advocate was not there all the time. The tenant had community mental health follow up with him after the hospital. The tenant has been agreeable to meeting the mental health team, he is being treated, he is doing well now, he is taking his medications, and he is connected to the team. The team has no plans to discharge the tenant, they want to maintain his housing, and there is no other available housing in the area.

The tenant testified regarding the following facts. There was a leak in the roof and the bottom sink pipes, which he fixed. If he did not fix the vinyl flooring, it would have created black mold. He cleaned up his rental unit, it looks nice, and he has received compliments from his neighbors. He cooks supper for his neighbors almost every day. He has kept the noise down and asks his neighbors if it is too loud. He has heard banging from upstairs.

The landlord's agent stated the following facts in response. The social worker talked about old disgusting carpet on the floor, but there is no carpet anywhere in this building. The tenant removed the vinyl floor, and it is now exposed wood, so how would that look nice. There were no complaints from the tenant to the landlord, about leaks. The landlord's agent knocked on the door and the tenant let him into the rental unit. The landlord's agent asked if he could take pictures of the rental unit and the tenant agreed.

The landlord's agent stated the following facts in response to my questions. The landlord did not issue a One Month Notice to End Tenancy for Cause ("1 Month Notice")

to the tenant. The landlord just applied for the expedited hearing at the RTB, right away.

The tenant's advocate stated the following in response. There is carpet in the bedrooms of the tenant's rental unit.

Analysis

Burden of Proof

During this hearing, I informed the landlord's agent that, as the applicant, the landlord has the burden of proof, on a balance of probabilities, to present and prove this application, claims, and evidence. The *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide sufficient evidence of its application, in order to obtain an order of possession against the tenant.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord's agent testified that he served this application package to the tenant, as noted above. The landlord received a four-page Notice of Dispute Resolution Proceeding ("NODRP") document from the RTB. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*

- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days to issue a written decision after this hearing. Both parties affirmed their understanding of same.

The landlord received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord, as the applicant, to provide sufficient evidence of its application, since it chose to file this application on its own accord.

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord's agent did not sufficiently present the landlord's claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 33 minutes. I provided the landlord's agent with ample time during this hearing to present the landlord's application, submissions, and evidence. I provided the landlord's agent with additional time during this hearing to look up evidence, as he did not have the registered mail receipt for service of the landlord's application in front of

him, and he said he had to call another landlord agent on a different telephone, during this hearing, to obtain the service information.

The landlord's agent did not sufficiently review or explain the landlord's documents submitted for this hearing. He referenced providing photographs but did not sufficiently review or explain these photographs or other documents submitted by the landlord. He did not point me to specific documents, page numbers, provisions, or other information, during this hearing.

Findings

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the 30 days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (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...*

The landlord's agent did not testify about which one of the above parts of section 56(a) of the *Act*, were relevant to the landlord's application.

Residential Tenancy Policy Guideline 51 states the following, in part:

B. EXPEDITED HEARINGS

... These are circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant...

...

C. TYPES OF EXPEDITED HEARINGS

Early End of Tenancy

Under section 56 of the RTA and section 49 of the MHPTA, a landlord may apply to end a tenancy early and obtain an order of possession if 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 to take effect under section 47 the RTA or section 40 of the MHPTA [landlord's notice: cause], and a tenant or their guest has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or manufactured home park;*
- *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity (see Policy Guideline 32: Illegal Activities) 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 manufactured home park,*
 - *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 or manufactured home park.*

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.*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the Act. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord's agent stated that the tenant renovated his rental unit, played basketball and loud music in his rental unit, and numerous neighbours made complaints to the landlord about the tenant. The landlord failed to produce these neighbours as witnesses to testify at this hearing. The landlord failed to provide witness statements from these neighbours as evidence for this hearing.

The landlord provided text messages allegedly from a janitor, regarding complaints of the tenant's loud music, but the landlord's agent did not review or refer to them at all during this hearing. The landlord did not provide any police reports or police statements, indicating that the police were called and took the tenant "by force" from the rental unit, as alleged by the landlord's agent during this hearing.

The tenant and his advocate disputed the landlord's allegations. The tenant's advocate testified that the tenant was cooperative and receiving ongoing mental health care,

treatment, medication, and support from a mental health team, and would continue to do so, in order to maintain his housing.

I find that the landlord failed to provide sufficient testimonial and documentary evidence to prove this application, as per Residential Tenancy Policy Guideline 51. I find that the landlord failed to provide sufficient evidence to demonstrate the urgency of this situation or that it would be “unreasonable” or “unfair” to wait for a 1 Month Notice to be determined.

The landlord did not submit a 1 Month Notice as evidence for this hearing. The landlord’s agent testified that a 1 Month Notice was not issued to the tenant. The landlord’s agent did not mention a 1 Month Notice, until I specifically asked him about it.

The landlord had ample time to provide sufficient evidence prior to this hearing, as this application was filed on January 30, 2023, and this hearing occurred on February 23, 2023.

Accordingly, I dismiss the landlord’s application for an early end to this tenancy and an order of possession, without leave to reapply.

Conclusion

The landlord’s entire 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: February 23, 2023

Residential Tenancy Branch