



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with an application by the landlord under the Residential Tenancy Act (the Act) for the following:

- An order for early termination of a tenancy pursuant to section 56
- An award for reimbursement of the filing fee of \$100.00 pursuant to section 72

Decision

The landlord entitled to end the tenancy early and obtain an Order of Possession under section 56 of the Act as well as reimbursement of the filing fee.

The landlord is granted an Order of Possession effective two days after service.

Attendance

The landlord attended and had opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 27 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the

landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided his email address for delivery of the decision.

Service

As the tenant did not attend the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Hearing and Application for Dispute Resolution for this hearing.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent by them on March 20, 2023. The landlord submitted a completed Proof of Service document in the RTB form.

The landlord testified they sent the registered mail to the tenant's residential address.

The landlord provided the Canada Post Tracking Number in support of service and submitted copies of the receipts.

Under section 90 of the Act, the registered mail is deemed received by the tenant five days later, March 25, 2023.

Section 15 of *Residential Tenancy Policy Guideline #12 - Service Provisions* explains the requirement for proof of service;

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

In consideration of the landlord's testimony and credible supporting

documents, I find that the landlord has established service on the tenant of the Notice of Hearing and Application for Dispute Resolution as testified in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy early and obtain an Order of Possession under section 56 of the Act as well as reimbursement of the filing fee?

Background and Evidence

The landlord submitted a comprehensive lengthy evidence package consisting of a timeline of events, warnings to the tenant, and correspondence with the occupant of the apartment above the unit rented to the tenant.

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

Tenancy

The tenant rents a lower apartment in a building. An occupant, a family, rents the apartment above.

The landlord submitted a copy of the tenancy agreement as evidence and testified as follows:

INFORMATION	DETAILS
Tenancy Agreement, Signed, Submitted	Yes
Type of Tenancy	Month-to-month
Beginning Date	February 1, 2022

Vacancy Date	ongoing
Rent payable on first of month	\$1,600.00
Security deposit	\$800.00
Arrears of Rent	\$800.00 March 2023 \$1,600.00 April 2023

In his application, the landlord stated he wants the tenant evicted because of the conduct of the tenant and his wife. The landlord stated as follows in his written application:

This tenant and his wife have drinking problem, constantly harassing and threatening the single mother of 3 kids up above. Police has been there many times called by the upper tenant for protection. [The tenant] started turning off the power for the upper suite after I gave him 10 day eviction notice on March 2/2023. Between March 2nd and March 6th [2023] Police were there 5 times to turn the power on [...]

The landlord testified as follows and submitted substantiating documentary evidence for all testimony:

- The upstairs occupant, a single mother with children, reported to the landlord that the tenant has threatened to kill her and her children.
- The upstairs occupant fears for her safety and that of her children. He has called her a “whore” and other insults. He has said other abusive, degrading things to her causing her to cry.
- The tenant and his wife drink large amounts “all the time” and when drunk are abusive to the landlord and the upstairs occupant.
- The landlord and the upstairs occupant have called the police many times. The police warned the landlord not to approach the tenant on his own and to always have the police as protection. The police informed the landlord

that if they were called to the unit one more time, they would arrest the tenant.

- The tenant plays the music in his unit at any time of the day or night at a volume unbearable to the upstairs occupant.
- The tenant has screamed racist, insulting abuse to the landlord.
- The tenant has taken the children's toys and other possessions of the upstairs occupant, some of which he destroys and throws out.
- The landlord submitted copies of warning letters to the tenant. The latest was February 16, 2023. The tenant's behaviour has worsened over time. The tenant's behaviour has not changed.
- The tenant stopped paying rent mid-March 2023 and told the landlord he would not pay any more.

The landlord requested an early end of the tenancy and an order of possession under section 56 of the Act.

Analysis

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

Standard of Proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to 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 the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section states:

Application for order ending tenancy early

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

Expedited hearings are for serious matters; they are scheduled on short timelines and on short notice to the respondent.

Policy Guideline 51 – Expedited Hearings provides guidance on applications of this nature. The Guideline states that the expedited hearing procedure is for 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.

The Guideline states in part as follows:

Ordinarily, the soonest an application for dispute resolution can be scheduled for a hearing is 22 days after the application is made. This helps ensure a fair process by giving the respondent ample time to review the applicant's case and to respond to it.

However, 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.

...

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.

To grant an Order of Possession under section 56(1), I must be satisfied as follows (emphasis added):

56 (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;

(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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The landlord relied on sections (a)(i) and (ii). That is, the tenant had:

(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;

After considering the Act, hearing the testimony and reviewing the evidence, I find the landlord has established the first ground, that is, that the tenant has

significantly interfered with or unreasonably disturbed people living in the building, ie: the landlord and occupants.

I find the cumulative effect of the tenant's actions to amount to significant interference and unreasonable disturbance.

I find the landlord provided credible testimony and sufficient supporting evidence from the witness, the upstairs occupant. I find the landlord has established that the events happened in the manner to which they testified. I find the landlord's account of what took place to be reliable and believable.

With respect to the second ground, I find the landlord has shown that there is a reasonable risk of danger or harm to the other occupants by the tenant's behaviour and a risk of ongoing disturbance of a serious nature. I find the tenant has threatened to kill the upstairs occupant and her children. I find they are in imminent danger.

Summary

In summary, in considering the evidence and submissions, I find the landlord has met the burden of proof with respect to the first and second section:

- (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;

I also find the landlord has met the burden of proof with respect to the second part of the test, as follows:

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.

I find the landlord has established that it is unreasonable or unfair to wait for the landlord to issue a One Month Notice to End Tenancy for Cause in view of the threats, police involvement, the pattern of disruptive behavior over many months, and the escalating nature of the violent threats and behaviour.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order under section 56 of the Act.

Accordingly, I allow the landlord's application for an early end to this tenancy and an Order of Possession will be issued.

The landlord is granted an award for reimbursement of the filing fee of \$100.00 which he may deduct from the security deposit.

Conclusion

I grant an Order of Possession pursuant to section 56 (Early End of Tenancy) to the landlord effective on two days' notice. This Order must be served on the tenant.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 06, 2023

Residential Tenancy Branch