



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

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

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:57 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution hearing.

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."

The landlord confirmed their email address for service of this decision and order.

Preliminary Issue- Service

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution in the presence of an RCMP officer on March 20, 2023. The landlord testified that she thought she uploaded the proof of service documents for same; however, they were not in evidence. The landlord attempted to upload the proof of service documents during the hearing but was unable to convert the files to an approved format for upload.

I provided the landlord with 24 hours to provide the proof of service documents. I find that the tenant is not prejudiced by the late evidence as it pertains to service, and not the merits of the application for dispute resolution. Within the 24 hours provided to the landlord, the landlord uploaded RTB Form 9 "Proof of Service Notice of Expedited Hearing Dispute Resolution Proceeding". The above form states that the tenant was personally served with the landlord's Application for Dispute Resolution on March 20, 2023, but the tenant refused to sign for said service. The service was witnessed by an RCMP officer.

I find that the tenant was served with the landlord's application for dispute resolution and evidence in accordance with section 89(2) of the *Act*.

The landlord testified that after she served the tenant with her application for dispute resolution, she uploaded additional evidence to the Residential Tenancy Branch website.

Rule 10.2 of the Residential Tenancy Branch Rules of Procedure states:

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution

I find that all evidence that was not submitted with the Application for Dispute Resolution is excluded from consideration.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?

2. Is the landlord entitled to authorization to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Evidence/Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's 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 provided the following undisputed testimony:

- this tenancy began on December 2, 2022,
- monthly rent in the amount of \$1,000.00 is payable on the first day of each month, and
- a security deposit of \$500.00 was paid by the tenant to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that:

- the tenant moved 5 to 6 drug addicts into the subject rental property,
- people have been found sleeping in the hall outside the subject rental property,
- the tenant lets his pit-bull loose in the hallways,
- the tenant dripped gasoline through the hallway,
- the tenant blocks exits with carts, toboggans and other items,
- the tenant's guest carried an axe attached to a long pole into the subject rental building,
- the tenant removed all the kitchen cupboards,
- the tenant stole sliding doors from the landlord and has installed them in the subject rental property to make more rooms,
- the tenant has not paid rent in full and has been served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), and
- the tenant roughed the landlord up.

The landlord entered into evidence the following:

- use and occupancy only receipts for rent,
- photographs of an axe attached to a pole,

- photographs of the tenant's exterior deck, full of debris including a bike, tires and a gas can,
- photographs of large items blocking an exit,
- a photograph of drug paraphernalia in unit,
- a photograph of a pit-bull in a hallway,
- a photograph of a cart in a hallway,
- email and had written complaints from other tenants against the tenant, and
- a photograph of a person sleeping in front of the tenant's door.

The landlord testified that people are scared of the tenant and his guests who have caused havoc at the subject rental property. The landlord testified that in February 2023 the tenant was served with the Notice and did not dispute it. The Notice was entered into evidence and has an effective date of February 24, 2023. The tenant did not dispute the Notice.

The landlord testified that on February 24, 2023 another tenant told her that the tenant had boxes in the hallway. The landlord testified that she thought that the tenant was moving out. The landlord testified that she attended at the subject rental property and knocked on the door which was open. The landlord testified that she informed the tenant that she brought garbage bags and was willing to help with the move out.

The landlord testified that the tenant became aggressive and angry and told her that he was not moving out. The landlord testified that the tenant then grabbed her arm hard enough to bruise her and shoved her out down the hallway. The landlord testified that her ribs hurt for days after he shoved her and she had several bruises on her arms. The landlord entered into evidence photographs of the bruises on her arms.

The landlord testified that she is a 64-year-old woman measuring 5'2 in height. The landlord testified that the tenant is approximately 5'10, is in his forties and is physically fit. The landlord testified that she was scared when the tenant roughed her up and is scared of any interaction with the tenant, which is why she had the RCMP attend when he was served notice of this hearing.

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to

end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *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;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

Based on the landlord's undisputed testimony and the photographs of bruises on the landlord's arm, I find that the tenant physically assaulted the landlord on February 24, 2023. I find that in assaulting the landlord, the tenant seriously jeopardized the health, safety and lawful rights of the landlord, contrary to section 56(2)(a)(ii) and section 47(1)(d)(ii) of the *Act*.

I find that it would be unreasonable and unfair to the landlord to wait for a notice to end tenancy under section 47 as further acts of violence against the landlord and other tenants at the subject rental property may occur in that time. I find that it would be unreasonable to put the landlord and other occupants at such risk.

Pursuant to section 56 of the *Act*, I grant the landlord a two-day Order of Possession which must be served on the tenant.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

The landlord is entitled to retain \$100.00 from the tenant's security deposit.

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 03, 2023

Residential Tenancy Branch