



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **ET**

Introduction

This hearing was convened by conference call as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an early termination of the tenancy and an Order of Possession pursuant to section 56.

The original hearing of the Application was held on April 20, 2023 ("Original Hearing"). The Landlord, the Landlord's advocate ("ST") and the Tenant attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* ("RoP") prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

The Original Hearing was scheduled for one hour and there was insufficient time to take all the parties' testimony and allow rebuttals at the Original Hearing. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing and issued an interim decision dated April 20, 2023 ("Interim Decision"). In the Interim Decision, the Landlord was ordered to serve the Tenant by email with a copy of the Notice of Adjourned Hearing, Interim Decision and her evidence ("Landlord's Evidence"). The Interim Decision allowed the Tenant to serve the Landlord with evidence to respond to the Application and the Landlord's Evidence.

The hearing for the adjourned hearing ("Adjourned Hearing") was scheduled for April 28, 2023. The Landlord, the Landlord's advocate ("ST") and the Tenant attended the hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. At the Adjourned Hearing, the Landlord stated she served the Notice of Notice of Adjourned Hearing, Interim Decision and Landlord's

Evidence on the Tenant by email on April 21, 2023. The Tenant acknowledged receipt of the foregoing materials. As such, I find the Tenant was served with the Notice of Adjourned Hearing, Interim Decision and Landlord's Evidence in accordance with the provisions of sections 88 and 89 of the Act.

The Tenant stated he did not serve any evidence on the Landlord.

Preliminary Matter – Service of Notice of Dispute Resolution Proceeding and Evidence by Landlord on Tenant

ST stated the Landlord served the Notice of Dispute Resolution Proceeding ("NDRP") and the Landlord's Evidence on the Tenant by email on April 7, 2023. When I asked, ST stated the Landlord and Tenant communicated with each other by email in respect of a previous dispute resolution proceeding. The Tenant stated that he blocked the Landlord from sending him emails because he was being harassed by the Landlord.

Section 89(2) of the Act states:

- 89(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:
- (a) by leaving a copy with the tenant;
 - (b) by sending a copy by registered mail to the address at which the tenant resides;
 - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
 - (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
 - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
 - (f) by any other means of service provided for in the regulations.

Section 43 of the *Residential Tenancy Regulations* states:

- 43(1) For the purposes of section 88 (j) [*how to give or serve documents generally*] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

- (2) For the purposes of section 89 (1) (f) *[special rules for certain documents]* of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.
- (3) *For the purposes of section 89 (2) (f) of the Act, the documents described in section 89 (2) of the Act may be given to a tenant by emailing a copy to an email address provided as an address for service by the tenant.*

[emphasis added in italics]

The Landlord did not submit any evidence that the Tenant provided the Landlord with his address for service by email pursuant to section 89(2)(f) of the Act. The Tenant stated he blocked the Landlord from sending him emails. The Landlord did not apply for an order to allow her to serve the Tenant by email pursuant to section 71(1) of the Act. As such, I find the Tenant was not served with the NDRP in accordance with the Act. I also find the Tenant was not served with the Landlord's Evidence in accordance with section 88 of the Act.

At the Original Hearing, the Tenant agreed to unblock the Landlord's emails. Pursuant to the Interim Order, the Landlord was required to serve the Notice of Adjourned Hearing, Interim Decision and Landlord's Evidence by email. As noted above, the Tenant acknowledged receipt of the foregoing documents.

Issue to be Decided

- Is the Landlord entitled to an early termination of the tenancy and an Order of Possession pursuant to section 56?

Background and Evidence

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

The Landlord submitted into evidence a signed copy of the tenancy agreement dated April 1, 2022 between the Landlord and Tenant. The parties agreed the tenancy commenced on April 11, 2022 with rent of \$3,200.00 payable on the 31st day of each month. The tenancy agreement required the Tenant to pay a security deposit of

\$1,600.00. The Landlord acknowledged receipt of the security deposit from the Tenant and that she was holding the deposit in trust for the Tenant. Based on the foregoing, I find there is a residential tenancy between the parties and that I have jurisdiction to hear the Application.

The Landlord stated the Tenant assaulted the Tenant's roommate. The Landlord stated the RCMP were called and the Tenant was removed from the rental unit. The Landlord stated the RCMP ordered that the Tenant was not to return to the rental unit unless escorted by a police escort. The Landlord stated the Tenant is aggressive toward the Tenant and the Landlord. The Landlord stated the roommate told her that he believed the Tenant returned to the rental unit without a police escort. The Landlord submitted into evidence three photos, one of which showed the roommate with a bloody face and the other two photos showing blood on the floor where the roommate was standing.

The Tenant stated his roommate attempted to enter his room and he kicked in the door. The Tenant stated an altercation then erupted between the two of them. The Tenant stated he attempted to stop his roommate from entering his room by pushing the door closed. The Tenant stated he reached around the door with his arm and hit the Tenant. The Tenant stated he did not intend to injure his roommate. The Tenant acknowledged he was ordered by the RCMP that he was not to return to the rental unit. The Tenant stated he was told that he could rent to the rental unit on one occasion in the presence of a police escort. The Tenant stated his father and brother returned to the rental unit to retrieve some of his personal possessions. The Tenant stated the roommate may have mistaken his brother's voice as his because they have similar voices. The Tenant stated he has been charged with assault and there is court hearing on May 30, 2023.

The Landlord stated the Tenant is an imminent risk to the roommate and that it would be unreasonable and unfair for the roommate and the Landlord to wait for the Landlord to serve a Notice to End Tenancy on the Tenant.

Analysis

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 the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

The conditions that must be met for a tenancy to be ended early are set out in subsections 56(2)(a)(ii) and section 56(3) as follows:

- 56(2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that
- (a) the tenant or a person permitted in the manufactured home park by the tenant has done any of the following:
 - [...]
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - [...]
 - (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.

Residential Tenancy Branch Policy Guideline (“RTBPG”) Number 51

[Expedited Hearings] provides guidance on a landlord’s application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of that Policy are relevant to the Landlord’s application:

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

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).

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).

The Tenant admitted his roommate was injured during an altercation. Although the Tenant stated he did not intend to injure his roommate, he was nevertheless removed from the rental unit and told not to return except in limited circumstances. The Tenant admitted he has been charged with assault and there is a hearing date before the court. The Landlord stated she believes the Tenant is an imminent risk to the roommate.

Although the Tenant has not been convicted of assault, the police and Crown Prosecutor have found there was sufficient evidence to charge the Tenant with assault rather than charging the roommate with assault. As such, I find the Landlord has proven, on a balance of probabilities, that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of another occupant of the rental unit.

The Landlord stated the roommate is fearful of the Tenant and the Tenant represents an imminent threat to the roommate. I find the Landlord has proven, on a balance of probabilities, that she has cause to end the tenancy pursuant to section 56(2)(a)(ii) of the Act and that it would be unreasonable or unfair to the Landlord and another occupant of the rental unit to wait for a Notice to End Tenancy to take effect.

Based on above, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached Order on the Tenant. Pursuant to section 68(2)(a) of the Act, I find the tenancy ended on April 29, 2023.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. Should the Tenant or anyone on the premises 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 29, 2023