



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1256607 B.C.LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Decision

The landlord is granted an Order of Possession effective 2 days after service.

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.
- Reimbursement of the filing fee pursuant to section 72.

The landlord's agent SH attended the hearing ("the landlord"). The tenant attended.

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. I explained the hearing and settlement processes, and the potential outcomes and consequences, to all parties. All parties had an opportunity to ask questions, which I answered.

Neither party made any adjournment or accommodation requests.

The tenant called the witness MC who provided affirmed testimony.

Preliminary issues are:

1. *Service*
2. *Settlement Discussions*

1. *Service*

The landlord testified the tenancy agreement contained the tenant's email address for service. He testified he served the tenant with the Application for Dispute Resolution and Notice of Hearing by email on April 1, 2023, at that email address. The landlord read out the email address at the hearing and the tenant confirmed she is still using the email address.

However, the tenant denied receipt of the landlord's documents. She had no explanation for why she did not receive the documents.

The landlord also testified served the tenant on March 31, 2023, by posting to the tenant's door an envelope containing the Application for Dispute Resolution and Notice of Hearing. The landlord submitted a photo of the posted envelope taped to the door.

The landlord testified the envelope was too heavy and he accordingly placed the envelope in the mailbox. The landlord took a photo of the mailbox adjacent to the tenant's front door with the envelope visibly protruding from the mailbox. The landlord submitted copies of the photographs as evidence.

The landlord testified that he included all documents required to be served. This included a 4-page *Notice of Dispute Resolution Proceeding* issued March 30, 2023, which included the teleconference call-in numbers and the Access Code. The landlord is required to serve this document on the tenant as it contains key information for participation in the hearing.

The tenant objected to the admission of the landlord's evidence based on the omission of the *Notice of Dispute Resolution Proceeding* from the package. The tenant acknowledged receipt of the rest of the landlord's evidence.

The tenant acknowledged she obtained the allegedly missing information from the RTB.

The tenant did not claim her ability to prepare for the hearing was compromised, although she said it took two hours to obtain the missing information. The tenant did not request an adjournment.

Nevertheless, the tenant requested the landlord's application be dismissed for lack of service of the *Notice of Dispute Resolution Proceeding*.

After hearing both parties, I find the tenant's assertion that the document was not included in the evidence package to be unlikely. I find the landlord's recounting of service details were likely to be accurate and I find the Notice was included in the package. I also find the landlord sent all evidence including the Notice to the landlord as he testified.

I find the tenant did not claim that she was prejudiced in any way because of omission to include the Notice.

I therefore dismiss the tenant's application to dismiss the landlord's application for failure to provide her with a copy of the *Notice of Dispute Resolution Proceeding*.

I find the landlord served the tenant as required under the Act.

2. Settlement Discussions

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained the hearing and settlement processes more than once, and the potential outcomes and consequences, to both parties. Both parties asked questions, which I answered.

I informed the parties that I make my Decision after the hearing and not during the hearing.

I assisted the parties in efforts to settle the matter. The parties came to a settlement from which the tenant withdrew as she asked about her rights to appeal.

Settlement discussions were therefore unsuccessful, and the hearing continued to conclusion.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and reimbursement of the filing fee?

Background and Evidence

The tenant submitted documents the day before the hearing which were not provided to the landlord. As the documents were not submitted and served in compliance with the Rules, I decline to consider the tenant's late filed evidence.

The landlord submitted substantial testimony and supporting documentary evidence. The tenant gave lengthy testimony.

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

Contents of this section:

1. *Tenancy*
2. *Events Leading to Application*
3. *Tenant's Testimony*
4. *Summary*

1. *Tenancy*

The landlord submitted a copy of the tenancy agreement. He testified the parties entered into a tenancy agreement beginning December 1, 2022, for \$3,800.00 monthly rent payable on the first of the month. The tenant paid a security deposit of \$1,900.00 which the landlord holds.

The landlord testified the unit was new when the tenant moved in.

2. Events Leading to Application

The landlord testified to the events leading to this application:

1. The tenant's partner BH planned to live in a second downstairs apartment below the unit and the tenant agreed to collect rent for both. BH did not move into the apartment and died of an overdose.
2. The police had been to the unit three times:
 - a. On February 23, 2023, a search warrant was executed at the unit. Stolen merchandise, fraudulent identification and illegal firearms were seized.
 - b. On March 19, 2023, the police were called to the unit by an occupant who reported "evil spirits" inside the home.
 - c. On March 31, 2023, the police executed a search warrant in response to a report of assault in the unit.
3. The landlord submitted as evidence a copy of a letter from the RCMP dated March 29, 2023, which stated as follows:

Late in 2022 we [the RCMP] became aware of a fraud/theft ring causing significant losses to some retail stores in the lower mainland. This investigation led us to the occupants of [the unit's address]. Over many months we gathered more information from our victim stores/retail partners.

We executed this search warrant on March 23 [2023]. We cleared two females out of the home. One of females stated she was your basement suite tenant. We recovered \$16,000 worth of stolen product inside the home. The items were seized and brought to our office with the intention of returning these items to the victim retail store.

We continue to investigate the possession of stolen property over \$5000 and Fraud over \$5000. All of the tenants were the suspects in our investigation.

4. During an inspection on March 7, 2023, the landlord observed damage to the property.
5. The police informed the landlord that the intended occupant of the downstairs unit BH had died of a drug overdose and the tenant was in the hospital. Another person was removed after a drug overdose.
6. The landlord conducted an inspection on March 24, 2023, and discovered the unit was "seriously damaged". The landlord submitted several photographs and a video showing the unit was disorderly, chaotic and unclean throughout, walls were damaged and items forming part of the tenancy agreement were broken, such as a sink.
7. The landlord stated the city has informed him the property has been declared a nuisance property because of the calls to the police which were listed in correspondence. The City may impose nuisance abatement fees on the landlord for subsequent service call responses.
8. The tenant is in arrears of rent and has disputed a 10 Day Notice.
9. In support of his testimony, the landlord submitted as evidence:
 - A letter dated March 29, 2023, from the RCMP
 - A letter dated April 10, 2023, from the city
 - Copies of photographs and a video
 - Written statement from the agent.

Tenant's Testimony

The tenant testified as follows. The tenant denied the landlord's evidence was true. There is no reason to evict her.

The tenant has cleaned and repaired the unit and the submitted pictures no longer represent the condition of the unit.

The tenant was in the hospital for two months. Upon release, she discovered she was locked out of the unit. She was able to gain entry and carry out the cleaning.

The tenant suffered a grievous loss with the death of BH. She has not been charged or convicted of any of the alleged offences, all of which are the responsibility of others. The tenant's personal possessions are missing.

The tenant has been victimized by the occupants of the unit, the police, and now, by the landlord. The landlord is treating her "very poorly" in the circumstances.

The tenant called the witness who corroborated her testimony:

- The tenant is being threatened with eviction from the unit without good reason.
- The tenant is being "targeted unfairly" by the police.
- The tenant has cleaned up the unit. Nothing structural has been broken.
- Any wrongdoing on the tenant's part is "all speculation" and the landlord is "slandering" her.
- The real reason the landlord wants the tenant out is so they can sell the house. The eviction has nothing to do with the tenant.

The tenant stated, "you [Arbitrator] have made your mind up, you are treating me like a criminal loser piece of crap I am being judged and this is a biased decision." The tenant asked how to appeal any Decision made against her.

Summary

The landlord requested an Order of Possession.

The tenant requested the application be dismissed without leave to reapply.

Analysis

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

Contents:

1. *Credibility*
2. *The Act*
3. *Findings*
4. *Summary*

1. *Credibility*

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth.

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Considering the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, credible, and forthright. The landlord provided consistent, logical, testimony supported by well-organized and complete documentary evidence. The testimony was supported in all material aspects by documentary evidence.

I find the landlord's version of events to be most in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable and likely to have occurred in that place and in those circumstances.

I find the tenant's testimony to be unreliable. I do not believe the tenant's allegations she has no responsibility for the events described by the landlord and the condition of the unit. I do not believe she has cleaned and repaired the unit.

Where their evidence conflicts, I believe the landlord's version of events as supported by convincing documents.

I therefore give the landlord's evidence the greatest weight in reaching my Decision.

2. The Act

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 of 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 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:

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.

(Emphasis added in bold)

The landlord relied on sections (a)(i)(ii) and (iii). 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;
- (iii) put the landlord's property at significant risk;

3. Findings

After considering the Act, hearing the testimony, and reviewing the evidence, I find the landlord has established all above grounds and is entitled to an Order of Possession.

The landlord gave candid, forthright, credible evidence supported in all material aspects by documentary, photographic and witness evidence. The landlord provided a comprehensive timeline leading to the present day.

I accept the landlord's recital of the facts in all aspects. I find the cumulative effect of the tenant's actions and the landlord's allegations to meet the burden of proof under the three sections.

I find the tenant has significantly interfered with or unreasonably disturbed the landlord, seriously jeopardized the lawful right or interest of the landlord , and put the landlord's property at significant risk. I find the police have attended at the unit and removed illegal firearms and allegedly stolen property, the property is seriously damaged, and the unit is at significant risk of further damage. I find there is credible evidence of illegal activity of a disturbing nature.

Considering the testimony and evidence, I find the landlord has met the burden of proof in this matter.

I find that the landlord provided enough evidence that it would be unreasonable to wait for a hearing for a One Month Notice.

4. Summary

In summary, on a balance of probabilities and for the reasons stated above, I find the landlord's application meets the burden of proof and satisfies all requirements 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 effective two days after service.

I award the landlord reimbursement of the filing fee under section 72. The landlord may deduct the sum of \$100.00 from the security deposit on a one-time basis.

Conclusion

I grant an **Order of Possession** under section 56 (Early End of Tenancy) to the landlord effective **two days after service**.

This Order may be filed and enforced in the courts of the province of BC.

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 19, 2023

Residential Tenancy Branch