Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

The landlord filed an Application for Dispute Resolution on January 24, 2020 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlord. The matter proceeded by way of a conference call hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on February 24, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; however, the tenant did not. I provided the landlord the opportunity to present oral testimony and make submissions during the hearing.

The landlord provided evidence of service of the 'Notice of Expedited Hearing – Dispute Resolution Proceeding' (the "Notice") to the tenant. This is a registered mail post office receipt with a tracking number. The landlord also provided a record of delivery status that shows this evidence was delivered to the tenant on January 27, 2020. I find the landlord served the required documents to the tenant in a manner that conforms with the provisions of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause by section 56 of the *Act*?

Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of tenancy. After taking an oath from the landlord, I gave them the opportunity to speak to the issue at hand, which is that of ending a tenancy for cause.

The landlord verified the terms of the tenancy agreement: the start date of June 27, 2019; the monthly rent amount of $2,300.00 payable on the first of each month; and the payment of a security deposit in the amount of $1,150.00. The landlord provided a copy of the residential tenancy agreement that was signed by both parties, supplemented by an Addendum and condition inspection report signed on the same date.

The landlord provided both documentary evidence and oral testimony to show how the conduct of the tenant constitutes a reason to end the tenancy for cause.

The landlord submitted the following relevant evidentiary material:

- Screenshots of messages, which the landlord identified as from the tenant, showing various terms indicative of the tenant's anger at the situation of repair, strongly worded with cursing language. A screenshot of Facebook messages from December 2019, similarly worded in strong language.
- Two letters from the tenant: one outlines the request for repairs (the subject of another dispute that is not at issue before me here); the second is a letter of apology that re-states the tenant's concern about lack of communication with the landlord.

To provide a description of this supporting evidence when preparing for this hearing, the landlord states:

> Both files are text messages sent by the tenant on Jan 20 starting at 6:40pm. The First page of messages shows how angry and how much she hates me, which leads to the Second page which states the words "Your done", which is a clear threat to my life.

The landlord referenced these pieces of evidence in their oral testimony. The landlord stated that they do not feel safe if there is a need to enter the rental unit and answered specifically to the tenant's claim in the evidence that they did not respond to the tenant's requests for repairs

and other messages. The landlord maintained that the tenant "absolutely did intend the statements", with these representing a "threat [that] is very serious".

The landlord also gave detail on a previous interaction on November 18, 2019 involving the hot water tank that prompted more text messages from the tenant. The tenant stated to the landlord at that time that they were "cancelling cheques and looking to move soon". The landlord stated that two other messages of a similar nature came from the tenant over the following month, with the tenant's request becoming more pointed and seemingly urgent around December 18 – 20, 2019.

The tenant – who did not attend the hearing on February 24, 2020, provided a letter that provides background and context for the dispute resolution filed as a separate matter. This is concerning requests for repair to the rental unit and includes photos of miscellaneous parts of the requests as well as a letter specific to that matter dated January 15, 2020. The tenant also provided a letter to the landlord dated January 28, 2020, which is a statement of apology and an explanation of the compounded stress from their life circumstances and matters concerning the rental unit.

Analysis

Section 56 of the *Act* provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

> 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 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.

Section 56(2) sets out two criteria. First, the landlord must prove the cause for issuing the Notice. Additionally, the evidence must show it would be unreasonable or unfair to the landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

> 56(2) . . .
> (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 issues surrounding the requests for repairs that is the subject of a dispute resolution process are not part of my consideration in this letter. The matter provides context for the messaging from the tenant to the landlord; however, it does not form any of the substance of the landlord's request for an early end to the tenancy. The landlord's request for an early end to the tenancy is based on a perceived proof of threat.

I have considered the evidence of the tenant's behaviour and I find it was inappropriate, both in words and in execution via messaging and the one instance of using social media. I find there is insufficient evidence from the landlord that the tenant presented an imminent danger to the health, safety or security of the landlord or a tenant. I find that the comments sent by the tenant via text message to the landlord's phone do not rise to the degree of imminent danger. I find the words "Your done" do not equate to a threat pointing toward imminent danger, and do not represent a threat on the landlord's life.

The landlord also addressed the matter of the tenant's claim, as outlined in her letter of January 28, 2020 and text messages, that he did not respond "for over a month" and "you either don't reply or blow me off completely when you do reply." The landlord equates this to the tenant "saying [the tenant] couldn't get hold of me . . . when text messages suggest otherwise". Notable is a lack of response to these text messages from the landlord. I find this does not represent a reasonable attempt by the landlord to remedy the situation. The landlord instead relied on tenant statements that it was time to move. In short, I do not see how a lack of response was due to a perceived imminent threat.

I do not see that this was a response, or lack of response, due to an imminent threat. In the hearing, the landlord stated that, after December 20, 2019, he did not respond to tenant claims of recurring issues in the unit needing repair. There is no evidence of communication from the landlord to the tenant from this point onwards, until he served the Notice on January 24, 2020.

In conclusion, I find the tenant's behaviour does not rise to a level that is sufficient to end the tenancy in this manner. An expedited hearing process is for circumstances where there is an

imminent danger to the health, safety, or security of a landlord or tenant. I find that the evidence and oral testimony presented by the landlord does not show this to be the case.

I find the landlord has not proven there is cause to apply for an order that ends the tenancy early by application of section 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a section 47 one month Notice to End Tenancy.

Conclusion

I find it would not be unreasonable, or unfair to the landlord, to wait for a Notice to end the tenancy issued under section 47 to take effect.

The landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed.

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: March 2, 2020

Residential Tenancy Branch