



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 28, 2020 (the "Application"). The Landlord applied for an order ending the tenancy early under section 56 of the *Residential Tenancy Act* (the "Act").

The Landlord appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were posted to the door of the rental unit April 30, 2020. The Landlord confirmed all evidence submitted to the RTB was included in the package. The Landlord submitted a video showing service and a Proof of Service signed by a witness confirming service.

Based on the undisputed testimony of the Landlord, video and Proof of Service, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(g) and 89(2)(d) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the package May 03, 2020. I am satisfied the Tenant received the package in sufficient time to appear at the hearing. I also find the Landlord complied with rule 10.3 of the Rules of Procedure (the "Rules") in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant

submissions. I have considered the documentary evidence and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an order ending the tenancy early under section 56 of the *Act*?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started April 01, 2020 and is a month-to-month tenancy. Rent is \$800.00 per month due on the first day of each month. The Tenant paid a \$400.00 security deposit. The agreement is signed by the Landlord and Tenant.

The Landlord testified as follows in relation to the basis for the Application.

Issues with the Tenant began a few days after he moved in. The Tenant is intoxicated almost daily. He is verbally abusive, swears and makes noise that disturbs other tenants in the building. She has been called to the building many times and cannot get the Tenant to stop.

The Tenant is consistently screaming and shouting at the top of his lungs. He is aggressive and shouts profanities when people try to approach him. She has been at the building at 9:00 or 10:00 p.m. and heard the Tenant yelling. She had an employee at the building one day who said the Tenant yelled for five hours non-stop.

The other tenants in the building can hear the Tenant. The Tenant is very disruptive. He is disruptive from the late afternoon to 3:00 or 4:00 a.m. The other tenants in the building work and the Tenant is keeping them up at night. The other tenants are at their wits end and have said they will move out if the Tenant is not evicted. The other tenants have tried everything, such as earplugs, to deal with the noise.

She cannot talk reason with the Tenant because he is constantly intoxicated. She has talked to the Tenant about his behaviour ten times. There is nothing she can do to stop the behaviour. The other tenants in the building have called police about the Tenant. Police attended May 09, 2020 and spoke to the Tenant twice about being quiet.

The Tenant has been abusive towards her. The first time she went to talk to the Tenant she told him to be quiet. The Tenant did not listen. She went back to talk to the Tenant and he swore at her. He put his arms up. She backed out of the rental unit because she did not want a confrontation. The Tenant put up his fists and made comments such as “come in and fight, I’ll fight you” and “go ahead and come in and fight me”.

The Landlord testified that she is afraid of the Tenant because he is constantly intoxicated and does not know what he is doing. The Landlord testified that she will not approach the Tenant on her own anymore because she is worried he will physically accost her.

The Landlord advised that she has not served the Tenant with a One Month Notice under section 47 of the *Act* because she is not permitted to due to the current pandemic.

The Landlord submitted that the circumstances are urgent because other tenants in the building cannot take the Tenant’s behaviour any longer and will move out if the Tenant is not evicted. The Landlord submitted that it is unfair to the other tenants in the building to have to deal with the Tenant’s behaviour or move out because of the Tenant’s behaviour.

The Landlord submitted the following evidence. Numerous videos of the Tenant being loud or yelling in the rental unit. A video of an interaction she had with the Tenant and another tenant of the building. Text message complaints from another tenant in the building about noise from the Tenant. Letters provided to the Tenant on April 18, 2020 and April 26, 2020 about the noise issue. Two complaint letters from other tenants about noise from the Tenant.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause issued under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

I am satisfied of the following based on the undisputed testimony of the Landlord, videos and documentary evidence submitted and referred to above. Noise issues with the Tenant began a few days after he moved into the rental unit in April. The Tenant is constantly making noise that disturbs other tenants in the building. The noise lasts for long periods of time, is consistent and occurs at unreasonable hours during the night. Other tenants cannot sleep because of the noise. Police have been called about the noise and have attended to talk to the Tenant about the noise. I am satisfied based on these circumstances that the Tenant has significantly interfered with or unreasonably disturbed other occupants of the building.

I am satisfied of the following based on the undisputed testimony of the Landlord, videos and documentary evidence submitted and referred to above. The Landlord has tried to address the noise issue with the Tenant multiple times and the Tenant has not stopped the behaviour. Police have attended and talked to the Tenant about the noise and the Tenant has not stopped the behaviour. The Landlord is afraid to approach the Tenant on her own due to an incident where the Tenant was confrontational.

I am satisfied based on the evidence submitted and my findings above that it is unlikely the Tenant's behaviour will stop.

I am satisfied it would be unfair or unreasonable to require the other tenants in the building to continue to live in a situation where they are constantly being disturbed to the

extent described and cannot sleep. I am satisfied it would be unfair or unreasonable to allow this situation to continue and leave the Landlord in the position of losing other tenants due to the Tenant's behaviour. I am satisfied it would be unfair or unreasonable to require the Landlord to deal with the noise issue through a One Month Notice issued under section 47 of the *Act*. In coming to this conclusion, I have considered that the Landlord cannot issue the Tenant a One Month Notice under section 47 of the *Act* at this time given the current pandemic and Ministerial Order M089 issued March 30, 2020.

I am satisfied the Landlord has met the onus to prove the tenancy should end under section 56 of the *Act*. Pursuant to section 56(2) of the *Act*, I issue the Landlord an Order of Possession for the rental unit which is effective two days after service on the Tenant.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 12, 2020

Residential Tenancy Branch