



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

On September 27, 2020, the Landlords submitted an Application for Dispute Resolution for an early end of tenancy.

The matter was scheduled as teleconference hearing. The Landlords and Tenant attended the hearing. The Landlord was assisted by a witness who lives at the residential property.

The Landlord and Tenant were provided with an opportunity to provide evidence orally and in written and documentary form, and to make submissions at the hearing

Preliminary and Procedural Matters

The Landlord's agent (son of the owner) testified that he served the Landlord's documentary evidence to the Tenant in digital format contained on a USB data stick. The Tenant acknowledged that he received the data stick from the Landlord but stated that he did not know what to do with it and that he did not open it or review the digital evidence.

The Landlord was asked what steps he took to confirm that the Tenant was able to view the electronic evidence and in reply he testified that he called the Tenant on a few occasions in an attempt to confirm that the Tenant could view the files. He testified that the Tenant was evasive and would not respond to the Landlord. Ultimately the Landlord did not receive confirmation that the Tenant could view the files.

The Tenant provided testimony confirming that he did not submit any documentary evidence to the Residential Tenancy Branch, or to the Landlord, in response to the Landlord's application. He testified that he received the Notice of Dispute Resolution

Proceeding on October 5, 2020, and he stated that he did not have an opportunity to provide evidence.

I find that the Tenant had 14 days prior to the hearing to submit evidence which is sufficient time to provide documents to the Residential Tenancy Branch and to the Landlord.

Since the Landlord could not confirm that the Tenant was able to view the Landlord's evidence and since the Tenant did not provide any evidence, the hearing proceeded based on a balance of probabilities and the strength of the testimony before me.

Issue to be Decided

- Does the Landlord have sufficient reason to end the tenancy early?

Background and Evidence

The Landlord and Tenant provided testimony agreeing that the tenancy began on June 26, 2019 on a month to month basis. Rent in the amount of \$400.00 is to be paid to the Landlord by the first day of each month. The Tenant paid a \$200.00 security deposit to the Landlord.

The Landlord rents out rooms to tenants under separate tenancy agreements and the tenants share common areas of the residential property.

The Landlord testified that prior to applying for an early end of tenancy he issued a One Month Notice to End Tenancy for Cause dated July 18, 2020 to the Tenant. The Landlord testified that the One Month Notice was served to the Tenant in person on July 18, 2020. The Landlord had a witness present who testified that he witnessed the Landlord serve the Tenant with the One Month Notice on July 18, 2020 in the afternoon. The Landlord's witness testified that the Tenant stated, "I will see you in court". The Landlord testified that the Tenant never disputed the One Month Notice.

The Tenant testified that he did not receive a One Month Notice to End Tenancy for Cause.

The Landlord testified that due to serious incidents at the rental property involving the Tenant, the Landlord applied for an early end of tenancy rather than applying for an order of possession based on the undisputed One Month Notice.

The Landlord testified that the Tenant is responsible for assaults, intimidation to other occupants, vandalism, and other damage to the rental unit.

The Landlord provided testimony regarding an assault that occurred on September 6, 2020. The Landlord testified that the Tenant assaulted him and another occupant of the rental property.

The Landlord stated that On September 6, 2020 he was within the residential property completing repairs at 1:20 pm when the Tenant who had briefly left the house re-entered and got into an argument with another occupant. The occupant had asked the Tenant if he was leaving in accordance with the One Month Notice he had been served. The Landlord became involved and also asked the Tenant if he was leaving and the Tenant walked up into the Landlord's face told the Landlord to "go". The Landlord testified that the Tenant put his hands on him and shoved him. The Landlord testified that he warned the Tenant do not push him; however, the Tenant pushed him again and threatened to kill the Landlord. A physical fight between the Tenant and Landlord ensued.

The Landlord testified that the Tenant grabbed his neck and pushed him to the floor. When they both gained their feet, the Tenant pushed the Landlord against a window and started gouging the Landlord's eyes using his thumbs. The Landlord testified that the Tenant pushed him over a coffee table. The Landlord stated that his vision was blurry, but he then noticed something in the Tenant's hand.

The Landlord's witness, Mr. D.H. who was kept separate until providing testimony, testified that he is an occupant living at the residential property. He testified that he asked the Tenant if he is leaving and the Tenant got into his face and said, "you are not a man" and said, "you will leave". Mr. D.H. testified that the Landlord then became involved and the Tenant pushed the Landlord. He testified that a fight ensued, and the Tenant grabbed the Landlord by the neck and pushed him to the ground. The witness testified that the Tenant was gouging the Landlord's eyes with his thumbs.

Mr. D.H. testified that he also noticed the Tenant held a metal barbeque skewer in his hand, so he kicked it away from the Tenant. He testified that the Tenant then began fighting with him by punching him and pulling his hair.

The Landlord testified that the police were called and attended the residential property.

In response to the Landlord and witness testimony, the Tenant provided affirmed testimony about what happened on September 6, 2020. He testified that they bother him every day by taking videos of him and accusing him of being a person who responds in anger. He testified that they asked him if he is leaving and he replied that

he is not leaving. He testified that they got closer to him and started physically fighting with him. He testified that he was fighting them to protect himself.

When the Tenant was asked to provide an explanation on how the fight started, he replied I did not push the Landlord. He testified "I don't know how it started".

Analysis

Section 56 of the *Act* states that a Landlord may make an application for dispute resolution to request an order to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 and granting the Landlord an order of possession in respect of the rental unit. If an order is made under this section, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

Under section 56 of the *Act*, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, the Tenant or a person permitted on the residential property by 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 interest 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,
- 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
- 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 or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

Based on the evidence above, the testimony of the Landlord, and Tenant and on a balance of probabilities, I find that the Tenant and Landlord were involved in a physical fight. I also find that the Tenant and another occupant of the residential property were involved in a physical fight.

Regardless of who started the physical fight, I accept the evidence before me from the Landlord and his witness that the Tenant was aggressively fighting the Landlord and Tenant. I accept the testimony that the Tenant pushed the Landlord to the ground, and against a window, and was gouging the Landlord's eyes. I am also mindful that the Tenant appears to have armed himself with a metal weapon. I find that the Tenant's actions went beyond an effort of simple self-protection.

I find that the Tenant was involved in an assault that has adversely affected the physical well being of another occupant and has seriously jeopardized the health and safety of the Landlord.

I find that there is should be no tolerance for this type of aggressive behavior; therefore, I am ordering that the tenancy needs to end immediately. I find 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 to take effect.

I find that the Landlord is entitled to an order of possession, effective two days after service on the Tenant pursuant to section 56 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The parties were informed of my decision at the hearing. The Tenant became argumentative and stated he did not have an opportunity to provide documentary evidence. The Tenant asked how long he could stay in the unit if he filed to dispute the Decision at Court.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution. I authorize the Landlords to retain \$100.00 of the security deposit.

Conclusion

I find that the Tenant has seriously jeopardized the health or safety of the Landlord by assaulting him and by adversely affected the physical well being of another occupant, and 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 to take effect.

The tenancy is ending immediately.

The Landlord is granted an order of possession effective one (2) days after service on the Tenant.

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: October 19, 2020

Residential Tenancy Branch