



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlord filed an Application for Dispute Resolution on November 20, 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 landlord also applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on December 11, 2020. In the conference call hearing I explained the process and provided both attending parties the opportunity to ask questions.

The landlord stated they delivered their evidence in this matter via prepared USB drive. It was attached to the door of the rental unit where the tenant lives. They provided a witness statement that attests to this. The tenant confirmed receipt of this evidence in advance of the hearing. They did not prepare their own documentary evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by section 56 of the *Act*?

Is the landlord entitled to reimbursement of the Application filing fee?

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 the tenancy for cause.

The landlord and tenant confirmed the details of the tenancy agreement that the landlord provided in their evidence. The tenancy started on May 1, 2019 and was for a fixed term set to end on April 30, 2020. The tenant stayed, paying successive monthly rent thereafter up until October 2020. An issue of the tenant's possession of the required number of keys was discussed in the hearing, as well as the agreement proviso governing short-term rentals.

The landlord provided videos, and documentary evidence to show how the conduct of the tenant constitutes a reason to end the tenancy in an expedited fashion. One key document is a timeline written by the building manager to the landlord on November 25, 2020.

This timeline sets out three incidents involving the tenant. These involve: a threat towards the tenant's roommate reported to security; tripping the fire alarm, "yelling and screaming"; and knocking on the doors of "several neighbouring units." The police attended for each incident. In the hearing, the landlord reiterated that this timeline gives a paraphrase of one officer's words that ' . . it is dangerous to let [the tenant] stay here . . He broke everything in [the rental unit]!"

The landlord outlined how they applied for and urgent end to the tenancy in an expedited process in July 2020. They did not attend the hearing due to incomplete information issued to them in advance of that hearing.

In this hearing, they added that they were not able to end the tenancy in any other fashion due to the government-mandated suspension of evictions over the past several months. Additionally, they added they made this current Application at the behest of the building management/strata. The November 25, 2020 timeline/email to the landlord gives the building manager's summation: "we strongly urge that you continue to take all necessary actions to effectuate an immediate eviction of the tenant . . ."

In the hearing the tenant stated they do not deny that the incidents took place. They provided that they attended at a local hospital where the diagnosis described a short-term mental disease due to substance use.

The tenant reiterated that there have been no more recent episodes since that in July. They set out that they are on a schedule with a psychiatric centre, their specific brand of work requires non-usage, and this is monitored strictly by an “outside company” that undertakes testing for substance use.

The landlord reiterated their concerns in the hearing, re-stating how other residents in the building are affected by this more extreme behaviour. They also stated there is a potential issue of liability.

The landlord presented that the landlord originally wished to move back into the unit at the end of the fixed term in April 2020. Additionally, the tenant has not been paying rent, it is not that much more difficult to find a rental unit in the city.

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;

I have considered the evidence of the landlord concerning the conduct of the tenant. The landlord has presented clear evidence – not denied by the tenant – that there were three incidents involving the police in 2020. I find each successive incident shows a pattern of behaviour that equates to that set out in section 56(2): interference or disturbance of others and jeopardizing the safety of others.

While the landlord spoke to the police evidence stating the state of the unit showed serious damage, they did not directly observe this on their own. Their reason for not making that query of the tenant and not visiting the unit was because of fear.

I weigh this evidence against the testimony of the landlord involving their pursuit of the issue earlier in summer 2020. They applied for an urgent end to the tenancy in an expedited manner; however, when that hearing fell through, they did not re-apply. The urgency of the matter is offset against this evidence.

The landlord provided they made this current application at the behest of the property manager. The email dated November 25, 2020 sets out the property manager's insistence that the tenancy end.

I find the landlord is now pursuing this matter with urgency; however, there is not an adequate explanation of the time gap from the previous urgent application and this one. Several months have passed at this point. The last incident was in July, and this conversely lends credence to the tenant's account that quite some time has passed since the last incident and they are mandated to monitor their condition.

In sum, there is a discrepancy between the claim of an immediate risk involving threats, and the fact that the landlord applied for this hearing on November 20, 2020. This is months after the latest incident. This scenario does not bear out proof that a dire situation existed in line with the need for an immediate end to the tenancy.

An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, so significant that it would warrant the tenancy end sooner than had the landlord issued a One Month Notice to End Tenancy for Cause. I find that the evidence and oral testimony presented by the landlord does not show this to be the case. There was a significant gap between the latest incident with the tenant and the landlord's Application here.

I find the landlord has not proven there is a valid reason to justify 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

The landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed without leave to reapply. Because they were not successful in this Application, they are not entitled to reimbursement of the Application filing fee.

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: December 11, 2020

Residential Tenancy Branch