



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an early termination of a tenancy pursuant to section 56 because 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.

The tenant was present for the hearing and the landlord was represented at the hearing by his agent/property manager, VN ("landlord"). As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Expedited Hearing and evidence, stating he had no issues with timely service of documents.

The landlord did not receive any of the tenant's evidence. The tenant testified he uploaded his evidence to the Residential Tenancy Branch's dispute management system and thought that the system would forward it to the landlord. Due to the misunderstanding, the tenant did not serve the landlord with any of his documentary evidence. The tenant's documentary evidence was excluded from admission for the hearing as the tenant did not serve it upon the landlord.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to show that the tenancy should end early for an imminent danger to the health, safety or security of the landlord or another occupant?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is a living unit located above a street level commercial establishment. There are no other living units in the building.

The landlord gave the following testimony. The tenancy began on August 1, 2019 as a fixed one-year term becoming month to month at the end of the first year. Rent was set at \$1,780.00 per month plus \$40.00 per month utilities, payable on the first day of each month. The landlord collected a security deposit of \$844.00 which he continues to hold.

The landlord testified that he has been receiving complaints from neighbours and businesses around the rental unit. The first complaint comes from the business below the tenant's unit. According to the landlord, the tenant plays loud music and is rude to people. He has received emails and calls from neighbours saying the tenant is rude and has threatened them. On April 1, 2021, the tenant had an argument with some people and threw a pie from his unit, pulled down his pants and exposed his rear end. The landlord states he saw a video of the incident and a photograph of the pie but he did not provide either of these items for me to view. The landlord testified that the tenant was arrested by the police that day.

The rental unit is a 4-bedroom unit and the tenant rents some of the rooms to other people not named on the tenancy agreement. The landlord believes the arrangement to be "subletting" of the rental unit, however acknowledges the tenant has always remained an occupant of the unit while acquiring "roommates". The landlord states that

when the roommates are not there, the tenant takes their belongings and this ends up in fights. The objective of ending this tenancy early is to prevent future roommates from being subjected to this victimization in the future.

The landlord called a previous roommate of the tenant, SL as his first witness. The witness testified that she paid the tenant a security deposit on May 27th for a move-in on June 1st. The tenant held himself out as the landlord of the unit but SL subsequently discovered the tenant is not the owner of the property. SL discovered the landlord was trying to evict the tenant after she moved in. After the landlord sought to have SL and another roommate sign a tenancy agreement, making them actual tenants of the landlord, the tenant lied to the landlord's assistant and aggressively told her to mind her own business. The tenant started sending SL threatening text messages (not provided as evidence) and SL discovered her property had been thrown over the balcony and irreparably damaged after she was kicked out by the tenant. When she went back to the unit with a police escort to retrieve her belongings, the police advised her the tenant had set up a trap using a television and a golf club. SL testified the last day in the rental unit was September 24th.

On cross exam, SL testified that she had never actually seen the tenant hitting anyone or follow through on any threats.

The landlord's second witness, JF testified that she lives in the building next door to the tenant and is not an occupant of the landlord's building. She testified that the tenant throws glass and junk off the balcony. He has threatened JF, saying he would rip her fingernails off and will kill her if she called the cops on him. The tenant has gone through several roommates who pay the tenant deposits which the tenant uses to pay his rent. He takes their things and throws them in the dumpster and changes the locks.

The witness testified that on April 1st, the tenant was calling people on the street racial slurs and in retaliation, those people went into the nearby convenience store, bought a carton of eggs and egged the tenant's unit. When the police came, the tenant spit on them and the police arrested the tenant. The tenant is banned from the convenience store.

The tenant gave the following testimony. On April 1st, he was watering plants and working out when he was called a goof by people on the street. Eggs started flying at him from the street. He threw a slice of pie back at the people and they left. When the police arrived, the tenant was cleaning the egg with a bottle of windex and he was

aggressively tasered by the police when he opened the door for them. There are pending charges against him however he has filed a complaint against the police.

On August 20th, when the landlord came to sign a new lease adding the new roommates, an ex-roommate, “L” came to the unit and was aggressive with the tenant. “L” kicked the cell phone out of the tenant’s hands and the tenant took “L” out of the unit without violence and brought him down the street. The police detained the tenant in their car while “L” was charged with assault.

The tenant submits that he is the proper landlord to the roommates and has the ability to evict them as a landlord. The tenant submits that since the roommate SL is not a tenant, her testimony is irrelevant.

The tenant was served with a One Month Notice to End Tenancy for Cause with an effective date of September 30, 2021. The tenant disputed this notice and a hearing date has been set for January 6, 2022. The file number for this dispute is recorded on the cover page of this decision.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord’s notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that 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 interests 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;
- engaged in illegal activity that 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;
- engaged in illegal activity that 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, the tenant 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

... 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. (bold emphasis added)

...

Applications to end a tenancy early are for **very 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).

I begin by addressing the tenant's assertion that the roommates have no standing to provide testimony in this case. The roommates are occupants of the rental unit. Occupants are defined in Policy Guideline PG-19 [Assignment and Sublet]:

Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, ***the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party.*** The third party

would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

While the roommates do not have the right to bring actions against the landlord or their tenant/roommate, the roommates' health, safety and security are protected as occupants of the rental unit under the Act by virtue of section 56. As such, their testimony is critical for me to determine whether any of those protections were jeopardized by the tenant.

While, the landlord has provided evidence that may potentially suffice to prove to an arbitrator that the tenancy should end for cause – such as significantly interfering with or unreasonably disturbing another occupant of the residential property, I find the landlord has not shown that it would be unreasonable to wait for a One Month Notice to End Tenancy for Cause to take effect.

In order for me to grant an early end to the tenancy I must not only be satisfied the landlord has the grounds to end the tenancy but that it would be unreasonable or unfair to the landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the tenant must be extreme and require immediate action.

The former roommate has vacated the rental unit and the landlord has no reason to believe any imminent danger would come to her if the tenant were to remain occupying the unit. Likewise, causing a disturbance to neighbours or playing music loudly above the commercial establishment is not one of the criteria under section 56 to end the tenancy early. It is only significant interference with or unreasonable disturbance of *another occupant or the landlord* that provides the grounds to end the tenancy. Lastly, the landlord stated that he wants to end the tenancy early to prevent the tenant from victimizing future roommates. An early end to tenancy under section 56 is not designed to prevent future events from happening. It is solely meant to be an emergency measure to allow a landlord to remove a tenant who pose imminent and severe risk to the landlord, another existing occupant or the landlord's property.

I find the landlord has provided insufficient evidence to satisfy me the tenancy should end early under section 56 as the landlord has not shown that it would be unreasonable to wait for a One Month Notice to End Tenancy for Cause to take effect. As such, the landlord's application is dismissed without leave to reapply.

Conclusion

The application is dismissed without leave to reapply.

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 06, 2021

Residential Tenancy Branch