



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: ET

Introduction

The landlord seeks orders under section 56 of the *Residential Tenancy Act* (“Act”).

Both parties attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

It should be noted that the tenant attempted to upload a letter from Island Health a day before the hearing, but for reasons that were never fully explained, was unable to do so. However, a copy of this letter was provided to the landlord, and the tenant was permitted to read in the contents of this letter during his testimony.

Issue

Is the landlord entitled to orders pursuant to section 56 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began on September 1, 2021. Monthly rent is \$1,400.00 and the tenant paid a \$700.00 security deposit. A copy of the written tenancy agreement is submitted into evidence.

In respect of their reason for making an application under section 56 of the Act, the landlord testified that the tenant’s actions and behavior were such that she was made fearful and that they unreasonably interfered with and disturbed her. She is “concerned for my safety.” Four neighbours (who remain anonymous) also told the landlord that they were concerned for their safety.

The particulars of the landlord's application reflect her concerns, and state that

The tenant is interfering with the me via text, social media, in the community and interfering with my work. Based on the content of the communications and evidence of violence on social media, I am fearful for my safety. Neighbours concerned for their safety. Workers harassed on site. RCMP have been involved multiple time and have recommended eviction, not to be around tenant alone, avoid contact, call 911 anytime. Mental health concerns mean situation is volatile and unpredictable.

At one point, on a date not specified, the landlord received up to 40 texts from the tenant. Copies of those texts were submitted into evidence. In one text there is a link to a "chaturbate" which opened up to an adult website. The website featured a livestream of the tenant with a sexually explicit video playing beneath (see landlord's document "Texts_to_me_including_sexually_explicit_material(1)").

An example of one of these texts is as follows: "now you can order me around all you like. you know guys actually love to be ordered around by women. also, you can watch me start cleaning, clothes, if you like (just don't watch w the kids, lol)." The tenant then continues onto other subjects, including references to sex trafficking.

The landlord testified that the tenant had an Instagram account on which the tenant made references to, and comments regarding, the landlord. For example, the tenant posts the following in respect of the dispute: "It is the responsibility of the applicant to notify the respondent of the withdrawal in writing [. . .] Hope she remembers to do this, or she'll be in even DEEPER DOODOO. Do NOT fuck w me. Get it?" Other social media posts have the tenant portraying a desire to engage in fights.

Finally, the landlord testified that she was so fearful that, instead of attending in-person at a municipal council meeting, the municipality arranged to have her made the presentation by videoconference. Correspondence with the municipality is in evidence.

The landlord testified that the situation is simply not safe, and that the RCMP have gone so far as to advise her to put up lights and a motion sensor, told her not to go near the tenant, and to have limited contact with him.

In response to anticipated testimony from the tenant, the landlord understands if the tenant is working through mental health issues, but perhaps he ought to find another landlord during this time.

The tenant testified that he was recently hospitalized for his mental health issues. Reading into evidence the contents of a letter from Island Health, dated November 23, 2021, the tenant explained that he had been both voluntarily and involuntarily admitted into hospitalization. The letter's author (J.W., an intake nurse) explains that the tenant, through his mental health disability, is at risk of losing his housing.

"I do apologize for any way that I've hurt [the landlord]," the tenant said. He was going through a diagnosed bipolar episode and it was during the peak of this episode that he had interactions with the landlord. (The interactions stemmed initially from the tenant's smoking cigarettes in the rental unit, which is prohibited.) As for the various texts and website, the tenant explained that he was concerned about some sort of sex trafficking going on. Last, he explained that he is in no way obsessed with, or desirous of wanting any connection to, the landlord. The tenant again remarked that he is "really, really sorry" for what transpired, but that he is now on stabilizer medication and is going to therapy.

As for the Instagram posts, he explained that he was not making the comments "at" the landlord, only that he was sharing with friends his difficult legal situation. Besides, he remarked, those posts were meant for his friends and that the landlord should not have been combing through them.

Analysis

Section 56(1) of the Act permits a landlord to 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 the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied on a balance of probabilities that

- (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, and
- (b) 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.

In this case, the nature and content of the tenant's highly inappropriate communications with the landlord persuade me, on a balance of probabilities, that the landlord was both significantly interfered with and unreasonably disturbed. Indeed, such references to himself as a "scorched earth motherfucker" and that "Im [sic] NOT a NICE PERSON" support the landlord's argument that she does not feel safe. Given the extreme nature of the content of the tenant's communications, it is also my finding that it would be wholly unreasonable and unfair to the landlord to wait for a notice to end the tenancy under section 47 of the Act.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her application for orders under section 56 of the Act.

It is not lost on me that the tenant struggles with mental health issues. He appears to be receiving medication and therapy for these mental health issues, or disabilities as it were. But as sympathetic as I am to his plight, however, mental health issues cannot be a defense to actions which give rise to a claim under section 56 of the Act. I am very much mindful that the landlord has a right to live feeling safe, without fear of unreasonable and significant interferences and disturbances such as those that she experienced.

Given the above, then, pursuant to subsection 56(1)(a) of the Act, the tenancy is hereby ordered ended effective immediately. Pursuant to subsection 56(1)(b) of the Act the landlord is granted an order of possession.

Conclusion

IT IS HEREBY ORDERED THAT:

1. the application is granted;
2. the tenancy is ended effective immediately, pursuant to section 56(1)(a) of the Act; and,
3. the landlord is granted an order of possession, pursuant to section 56(1)(b) of the Act. A copy of this order of possession must be served on the tenant (either by the landlord or by an agent of the landlord) and the order of possession is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 26, 2021

Residential Tenancy Branch