



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Axos Asset Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An early end to the tenancy and an order of possession - Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant made submissions through their legal representation. The Parties confirm receipt of each other’s evidence packages. The Tenant confirms that there are no issues with the service of the Landlord’s application. The Parties confirm that they are not using any recording devices for the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy started on June 1, 2006. Rent of \$692.50 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$287.50 as a security deposit.

The Landlord states that the Tenant will not stay on their medications and is a danger to other tenants. The Landlord states that the Tenant has gone off the medication three times: once in October 2020, once in November 2021 and then in June 2022. The Landlord states that they were informed by the Tenant's case worker of the Tenant being off medications. The Landlord provides an email from another tenant dated July 1, 2022 in relation to the second event that left this tenant feeling intimidated by the Tenant. This email also refers to the police action taken on June 7, 2022. The Landlord provides an undated handwritten letter from a cleaner that sets out interactions with the Tenant without any reference to the dates of these interactions.

The Landlord states that on June 6, 2022 the Tenant banged on the door of the upper tenant's unit while holding a cricket bat. The Landlord states that there were two previous incidents with the upper tenant being confronted for making heavy noises. The Landlord states that when the Tenant was in the hallway on June 6, 2022 another tenant was able to calm him down but that the Tenant then returned with the cricket bat. The Landlord states that the Tenant did not gain entry or assault anyone and that the police were called. The Landlord states that the police did not attend the unit and called the Landlord two hours later to inform the Landlord that they were busy. The Landlord states that since it was all quiet at this time the Landlord left it alone. The Landlord states that as there was no evidence of any danger and no other tenants had been approached the Landlord did not feel it was necessary to take any action until the latest incident on June 7, 2022. The Landlord states that they took over the building in 2014 and do not know of any prior incidents with the Tenant. The Landlord states that they did not provide a witness statement for the June 6, 2022 incident as the tenant was afraid to provide one.

The Landlord states that on June 7, 2022 the police were called to the unit by the mental health worker and the Landlord was called to bring a copy of the unit keys so that the police could gain entry. The Landlord did not enter the unit. The Landlord states that the police used tear gas and rubber bullets during the incident and that this

was a high risk to other tenants. The Landlord states that the police also drilled a hole in the unit for the gas. The Landlord states that the police emergency response unit had been called and that while the Landlord cannot speak to what was occurring the police were trying to get the Tenant out of the unit as the Tenant was destroying the unit. The Landlord states that upon entry two days later the Landlord discovered that the windows and door frame had been damaged. The Landlord states that items such as tables and chairs in the unit were upside down and that the police informed the Landlord that the Tenant had barricaded the unit door.

The Landlord argues that the level of the police response is evidence itself of the danger posed by the Tenant. The Landlord argues that they will have a building with no tenants and that while they have received only a couple of indications that tenants may leave, the Landlord believes that they will have a problem if the Tenant returns. The Landlord states that they fear the Tenant's behavior will escalate to harming other tenants.

The Landlord states that when the Tenant goes off medications the Tenant is irrational and not coherent. The Landlord states that they have tenants and cleaners that are petrified if the Tenant returns to the unit. The Landlord states that they are not equipped to handle a high-risk person. The Landlord states that there is no guarantee that it will not happen again. The Landlord states that they did not consider giving the Tenant a one-month notice to end tenancy for cause as the Residential Tenancy Branch (the "RTB") only gave them the option of the current application. The Landlord states that they only related the June 7, 2022 incidents to the RTB as they felt that the issues were minor in the past.

The Tenant argues that the police caused all the damage and disturbance and that the Notice therefore cannot be valid as section 56(2)(a) requires that the Tenant or someone permitted on the property by the Tenant must have caused the damage or disturbance. The Tenant argues that there is no evidence of any illegal activity and that

any disturbance to the other tenants was caused by the police action. The Tenant argues that there is no evidence of any immediate or severe risk by the Tenant and that the Tenant is not currently staying in the unit. The Tenant argues that there is no evidence that the Landlord could not wait to serve a one month notice to end tenancy for cause and it would not be unreasonable to wait for such notice. The Tenant submits that they are now in treatment and pose no danger to anyone. The Tenant points to the medical opinion dated July 27, 2022 from the Tenant's physician, a specialist, as evidence that the incident on June 7, 2022 was caused by the Tenant's medical condition and that with ongoing treatment there will be no future episodes.

The Tenant argues that on June 7, 2022 they did not pose any threat to others and were in their own room. The Tenant argues that the police action itself caused of the disturbance and interference with other tenants who were affected by the gas. The Tenant argues that this is a long-term tenancy with no evidence of any other disturbances or eviction actions taken by the Landlord.

Analysis

Section 56(2) of the Act provides that the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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.

The Landlord's evidence is that prior to June 7, 2022 the Landlord considered the previous incidents with the Tenant to be minor. The Landlord did not provide any evidence of having sent the Tenant any warning letters for the previous incidents and I note that they were each approximately a year apart. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that these prior incidents support any finding of causation to end the tenancy. Further based on these facts I consider that the incident on June 7, 2022 was both unexpected and isolated.

It is undisputed that on June 7, 2022 the Tenant did not allow entry by the police. There is no evidence of the Tenant's actions on that date other than the Tenant barricading their entry from the police. There is no evidence that the Tenant disturbed anyone in the building or the Landlord leading to the police attending the unit. While the Landlord argues that the extent of the police action supports that the Tenant is a serious risk, there is no evidence of the reasons why the Tenant was removed from the unit, no evidence that the Tenant presented an immediate and severe risk to the Landlord or other tenants, no evidence of any criminal charges arising from the incident and only evidence of subsequent hospitalization and medical treatment.

The Landlord is concerned that the Tenant will cause future problems apparently based on the Tenant's past failures to take medications. However, the Landlord's evidence is

that the Tenant's previous failures to take medication only caused minor incidents with others and there is no evidence that the Tenant has ever engaged in any behavior leading to the destruction of property by the Tenant. Further I prefer the Tenant's evidence from a medical profession that the Tenant has obtained treatment for the factors that caused the incident on June 7, 2022 to ensure that future episodes do not occur.

Given the Landlord's evidence of the damages to the unit and the evidence of the police actions to the unit I find that the Landlord has not sufficiently substantiated that the Tenant caused the damages to the unit. Further the Landlord's evidence of the other tenant's email dated July 1, 2022 indicates that no action was taken by the police leading up to or during the incident to protect the other tenants' exposure to the tear gas and the "horrific" results. I take this evidence to support that the distress and injury to the other tenants from the incident was caused by the police action itself. Whether or not the police action was justified is not a matter that may be determined under the Act.

For the above reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant or any person permitted on the property by the Tenant acted to cause or poses an immediate and severe risk to others or that 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 Landlord's application is dismissed in its entirety and the tenancy continues.

Conclusion

The application is dismissed, and the tenancy continues.

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

Dated: August 03, 2022

Residential Tenancy Branch