Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]
DECISION

Dispute Code: ET

Introduction

The landlord seeks orders under section 56 of the *Residential Tenancy Act* (the "Act") to end the tenancy early and for an order of possession.

A dispute resolution hearing was held on Friday, October 14, 2022. A representative for the landlord (the "landlord") attended, as did the tenant. No service issues were raised.

Issue

Is the landlord entitled to orders under 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 issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began about three years ago, though the parties disagreed on the exact start date; the precise start date of this tenancy is not relevant to the issue. Monthly rent is $375.00, and the tenant paid a $187.50 security deposit. A copy of the written tenancy agreement was in evidence.

The landlord testified that they seek to end the tenancy "due to an incident of violence" in which the tenant pushed an elderly female resident of the multi-residential unit property. The incident occurred at 6:12 PM on September 4, 2022 and was caught on surveillance video. A copy of the video was submitted into evidence. The video shows a female tenant exiting a door, and then the tenant "body checks" the tenant into the frame of the door, after which the female tenant walks away.

There was submitted into evidence by the landlord documentation relating to earlier incidents in March 2022, though the landlord did not present this evidence nor refer to it during the hearing.

The tenant testified that while he has had "a few issues" with some of the new tenants in the building "this is the only family I have" and that he "made a mistake," he "guarantee[s] that it will never happen again," and that he "is very sorry about it." He testified that he has "since apologized to the lady" about the event. He further noted that in the three years that he has resided in the building there has been only one incident where the police were involved.

Nevertheless, the tenant reiterated that he made a mistake, that he is willing to be on a "probation period" for the tenancy, that he is willing to attend anger management, and that "losing this tenancy is the worst thing for me."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The landlord's application is made under section 56(1) of the Act, which states that

> A landlord may make an application for dispute resolution requesting
>
> (a)   an order 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 *[landlord's notice: cause]*, and
> (b)   an order granting the landlord possession of the rental unit.

In order to grant the orders under this section, section 56(2)(a) and (b) of the Act states that an arbitrator must be satisfied that

> 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, while the tenant's pushing against the wall another tenant cannot be condoned, I am not persuaded that this one-time incident meets the criteria under section 56(2) of the Act. The landlord has presented a video of the incident, but they did not make any argument or provide any submissions as to *how* the incident caught by the surveillance camera actually meets the criteria in section 56(2) of the Act. Nor, for that matter, did the elderly tenant testify as to whether the one-time incident affected her. Indeed, based on the tenant's undisputed testimony, he has since apologized to the woman and there have not been any issues since early September.

Taking into careful consideration all of the oral and documentary evidence before me, it is my finding that the landlord has not proven on a balance of probabilities that they are entitled to orders under section 56 of the Act. Accordingly, the landlord's application for an order ending the tenancy early and for an order of possession under section 56 of the Act is dismissed without leave to reapply.

That said, the tenant is warned that even a single, further incident involving a similar physical interaction with another tenant—such as pushing—may be a sufficient reason for the landlord to terminate this tenancy. If the tenant is sincere in believing that others in the building are his family, then one would expect him to treat them as family: with kindness, with patience, and with care.

<u>Conclusion</u>

For the reasons given above, the application is dismissed.

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

Dated: October 15, 2022

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Residential Tenancy Branch