



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an early end of the tenancy, an Order of possession and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The female tenant and landlord were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony provided.

Preliminary Matters

The landlord served the male tenant with the hearing package by posting the hearing package to the door of the rental unit on March 12, 2014. The female tenant was personally served with the hearing package; this was not in dispute.

The landlord did not make any written submissions.

The tenant submitted evidence to the Residential Tenancy Branch (RTB) on March 13, 2014. That evidence was given to the landlord as part of a hearing package for an upcoming hearing; the tenants have applied to dispute a 1 month Notice ending tenancy.

As the tenant did not serve the landlord with evidence specifically for use during this hearing the tenant's evidence given to the RTB was set aside. The tenant was free to read from the evidence submission and to provide any other oral testimony.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to end tenancy?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in November 13, 2013. Rent is due on the 1st day of each month.

The landlord lives in the upper portion of the home; 2 rental units are in the lower portion of the home.

The landlord explained that the tenants have been causing disturbances to the other occupant and that a 1 month Notice to end tenancy was issued on March 3, 2014. The tenant has applied to dispute that Notice.

The landlord said that after the 1 month Notice to end tenancy was issued and served the male tenant's disturbing behaviour escalated. The other occupant who resides in the 2nd rental unit of the home had been distressed by the tenant on the night of March 7, 2014, resulting in the police being called to the home. The landlord was not at home, but his children were.

The landlord returned home on March 8, 2014 and at approximately 11:30 p.m. he went outside to retrieve items from his vehicle. The male tenant approached; the landlord described this as "up to my face;" the tenant told the landlord he was going to "get him." The landlord went inside and called the police. The landlord said that the tenant appears to be using drugs.

On March 9, 2014 the tenant was outside of the home yelling; the tenant's partner called the police and the tenant was removed and apparently hospitalized. The female tenant thought the male tenant would remain in the hospital but within a short period of time he was released without notification.

The landlord said that within 1.5 hours of being removed by the police the tenant was back at the rental unit. The male tenant came to the front door, yelling and screaming, saying he was going to kill the landlord that he would take the landlord down. The landlord described the tenant as being out of control. The landlord said the tenant broke the front door to the landlord's home and that the fiberglass door would have required significant force to be broken. The police were again called and the tenant was taken into custody.

The landlord has received a letter from a bail supervisor setting out the terms of the conditions of release for the tenant. The tenant has been charged with uttering death threats and mischief. The male tenant is not to attend at the rental unit address and is not to have any direct or indirect contact with the landlord.

The bail Order was issued on March 12, 2014, but on that date the tenant returned to the unit and was again arrested. He has since been released. The landlord suspected the male had been at the unit the night prior to this hearing; the female tenant said the landlord only had to come to the unit to check; she has a female friend staying with her.

The landlord said is afraid the tenant will return to the property and that he fears for his safety and the safety of his family. The landlord said the tenant immediately breached a condition of his release, which has caused concern.

The female tenant said that her partner suffers from mental health issues and that he is not a drug-user. On March 9 the female tenant thought her partner would be held in hospital but he was released without her knowledge; she had gone to her sister-in-law's home and was not at the unit when her partner went to the rental unit and could not get in the door. He called the female who asked that he approach the landlord to be let into the unit. The tenant said that the landlord refused to assist her partner; which caused her partner to react negatively. The tenant said that her partner would not hurt anyone, but that he can become frustrated.

The tenant arrived at the rental unit by taxi; by this time her partner had been arrested. She is very frustrated that he was released from hospital, as he would not have returned to the home. The tenant said that the landlord is aware of the fact her partner had recently been facing mental health challenges.

The tenant said that the landlord has not left the tenant alone and that he gets drunk and picks on the tenant. The tenant's partner did not realize that once released from custody on March 12 that he needed an officer to accompany him to the rental unit so he could pick up belongings. The tenant said that the landlord's door has not been broken. She said her partner has not returned to the rental unit since that time.

The tenant said that the lock to her unit is not working and she does not feel secure. The landlord agreed that immediately after the hearing he would check the lock, ensure that it was functioning properly and that the tenant had a working key.

During the hearing the parties discussed the pet and security deposits held by the landlord. The parties were told that the deposits must be disbursed in accordance with the legislation.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that he has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect.

The landlord must prove, on the balance of probabilities, cause as set out in section 56(2) of the Act, which provides:

Application for order ending tenancy early

(2) 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.*
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy*

There is no dispute that the tenant has been charged with uttering death threats and mischief; these allegations have yet to be proven. However, from the testimony of the landlord, a police officer saw fit to arrest the tenant and forward the charges for approval. This provides ample evidence that the tenant did engage in some sort of behaviour that was, at least to the landlord, threatening in nature.

Even though the tenant has been released with conditions that he not have contact with the landlord or attend at the rental unit, I find the landlord's concern that the tenant may return is not unreasonable. Since the tenant's partner continues to reside in the home I find it is not, on the balance of probabilities, an irrational fear that the tenant could attempt to return to the home.

The tenant may have misunderstood the terms of his release from custody, but he did return to the rental unit on 1 occasion, when the bail conditions specifically barred him from doing so. This gave me little confidence that the tenant would not return again.

I have considered the tenant's submission that her partner is suffering from a mental illness and understand that this could pose serious difficulty. However, the safety of the landlord and other occupants must take precedence over the right of the tenant to possess the rental unit. The legislation does not take into account a tenant's personal circumstances, such as addiction or mental health issues that may contribute to a tenant causing a disturbance or threat to safety.

Therefore; when the tenant made the threats against the landlord I find, on the balance of probabilities that those threats constituted a significant disturbance and negatively impacted the safety and security of the landlord, to the degree that it would be unfair for the landlord to wait for a Notice ending tenancy to come into force. Even if the landlord had frustrated the tenant by refusing to provide a key, that refusal, while unreasonable, would not entitle a tenant to act in a threatening manner; other remedies are available.

Therefore, I find that the tenancy must end. The landlord is entitled to an Order of possession effective 2 days after service to the tenants. The Order may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord application has merit I find the landlord is entitled to recover the \$50.00 filing fee from the tenant's security deposit. The value of that security deposit paid will be reduced by \$50.00.

I note that my assessment of the circumstances relates only to the confines of the *Residential Tenancy Act*; not to any criminal charges that have been laid.

Conclusion

The landlord is entitled to end the tenancy early and has been issued an order of possession.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 21 2014

Residential Tenancy Branch

