



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

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Introduction

This hearing was scheduled to deal with a landlord's Application for an early end of tenancy and Order of Possession made under section 56 of the Act. The tenant did not appear at the hearing. The landlord testified that the hearing package was placed in the tenant's mailbox at the property on April 24, 2015. I heard that the tenant is prohibited from attending the residential property by the court; however, the tenant's wife, an adult occupant of the rental unit, has been picking up the mail in the mailbox and she remains in contact with the tenant. The landlord submitted that the landlord has no other address at which to serve the tenant and since the tenant's mail is being picked up, placing documents in the tenant's mailbox is the best method to ensure the tenant receives documents addressed to him.

Based upon the undisputed evidence before me, and pursuant to sections 71 and 90 of the Act, I deemed the tenant to be sufficiently served with notice of this proceeding three days after the documents were placed in his mailbox and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

Has the landlord established an entitlement to an order to end the tenancy early and an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy commenced August 1, 2013 and the tenant is required to pay rent of \$375.00 on the 1st day of every month. Approximately six months ago, the tenant married and his wife has been occupying the rental unit with the tenant.

At approximately 4:43 a.m. on April 12, 2015 the landlord's staff person heard a woman screaming and ran upstairs to find the tenant's wife being attended to by another tenant

of the property. The landlord's log book describes the tenant's wife as having difficulty breathing and that she stated the tenant had choked her threatened to throw her out the window. The police were called and the tenant was taken away by the police. An ambulance also arrived and attended to the tenant's wife.

The landlord posted a 1 Month Notice to End Tenancy for Cause on the tenant's door on April 13, 2015, which was removed from the door, and that Notice has an effective date of May 31, 2015; however, the landlord seeks a more immediate Order of Possession given the seriousness of the crime and because as the other tenants of the property have expressed how fearful they are of the tenant returning.

The tenant has been charged with assault and has been prohibited from coming on the property or having contact with other tenants of the property who may witnessed the assault. Thus far, the tenant has complied with the condition to stay away from the residential property.

The landlord submitted that in these circumstances it is unreasonable to wait for the 1 Month Notice to take effect and that the early end of tenancy should be granted on the basis the tenant has engaged in illegal activity that has adversely affected the safety and physical well-being of another occupant; and, has adversely affected the quiet enjoyment of other tenants as well as put their safety at risk

Documentary evidence for this proceeding included copies of: the tenancy agreement; the landlord's log book entries of April 12, 2015; a "Critical Incident Report" prepared by the landlord as it relates to the assault that took place on April 12, 2015; the "Undertaking Given to a Justice or Judge" that provides for the conditions upon the tenant; the 1 Month Notice issued on April 13, 2015; and, a written submission of the landlord.

Analysis

Section 56(2) of the Act permits an Arbitrator to make an order to end the tenancy on a date that is earlier than the effective date that would be required on a 1 Month Notice to End Tenancy for Cause. In order to grant an order to end the tenancy early I must be satisfied 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.

[my emphasis added]

The landlord bears the burden to prove the tenant has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. This provision is intended to apply in the most severe circumstances; however, it is important to note that the burden of proof in these cases is based on the balance of probabilities and is not the same as a criminal standard.

Considering all of the landlord's undisputed evidence, on the balance of probabilities, I am satisfied that the tenant acted violently toward another occupant of the property and that this illegal conduct was such that other occupants' quiet enjoyment, security and physical well-being was adversely affected. I also accept that the violent nature of the crime is such that it is unreasonable for the landlord to wait for the 1 Month Notice to take effect. Therefore, I grant the landlord's request for an early end of tenancy and an Order of Possession under section 56 of the Act.

Considering the tenant is prohibited from attending the property and the landlord has not been provided another address at which to serve the tenant, I authorize and order the landlord to serve the tenant with the Order of Possession in one of the following ways:

- By leaving a copy in the tenant's mailbox at the residential property; or,
- By giving a copy to the tenant's wife or any other authorized agent attending the property on behalf of the tenant.

Conclusion

The landlord's application under section 56 of the Act was successful. The tenancy shall end effective two days after service of the Order of Possession.

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: May 06, 2015

Residential Tenancy Branch

