



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 convened by way of conference call in response to the landlord's application for an Order of Possession on an Early End to Tenancy and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy early and gain an Order of Possession on the basis of this application pursuant to section 56 of the *Act*?

Background and Evidence

The parties agreed that this month to month tenancy started in May, 2015. The tenant rented two rooms and the barn from the landlord on this farm. Rent for this unit is now \$900.00 per month due on the 1st of each month.

The landlord testified that the police came to the unit after being called by the landlord because the tenant had guns in the barn. The tenant had also been acting in a threatening way towards the landlord and as the tenant had access to some shared areas of the landlord's home the police removed the tenant and his belongings from the main house into the barn. The barn had only been rented for somewhere for the tenant to work on his vehicles but the tenant was making a living space out there. The barn has no running water, toilet or power.

The landlord testified that the tenant has issued threats to the landlord concerning his guns and saying that the landlord does not want to know what the tenant will do next. The tenant also stated that he would get his girlfriend who also lives in the barn with the tenant, to kick the shit out of the landlord. The tenant has threatened to burn the barn down and threatened the landlord with a bat.

The police did remove all the guns they could find in the barn but he they did not remove a large gun that the tenant has hidden in the barn. The barn was surrounded by nine police officers with the chief of police present. They entered the barn and removed guns in zip lock bags.

On one occasion the tenant's girlfriend came at the landlord making pushing motions with her hands. This person then flicked the landlord on the nose in front of witnesses. The tenant has run an extension cord from the landlord's house to the barn using the landlord's electricity. This extension cord is burnt and black and the police told the tenant he could not do this. The landlord had to go to the fire department who said the use of this extension cord could cause a fire to the house or the barn. The tenant tried to plug it back in after it was removed and the police had to come and tell the tenant again that he cannot do this. The landlord has provided a police file number in evidence.

The landlord testified that the tenant or his girlfriend have left a bucket of urine and feces with toilet paper in outside the landlord's bedroom window. There are also feces

in the yard. The tenant is now running his trucks to create power to the barn and the exhaust fumes are getting into the landlord's animals she has on the farm. The landlord testified that she runs an egg stand and collects eggs each day. There used to be many dozens of eggs but lately there have only been a few eggs and the landlord suspects the tenant or his girlfriend is taking the eggs.

The landlord testified that she is fearful for herself and her children and seeks an Order to End the Tenancy Early.

The tenant testified that the rent had been \$500.00 per month and the landlord raised it and had the tenant sign a new tenancy agreement saying rent was \$900.00 per month. Things then started to get really bad between the tenant and landlord and started to get out of hand.

The tenant testified that the landlord had the tenant's vehicles towed and the tenant actually went after the driver of the tow truck with a baseball bat not the landlord. The landlord had no right to remove the tenant's vehicles and then had to pay to have them returned. The tenant testified that he had to call the police and has provided a police file number in evidence.

The tenant testified that the landlord has had people come to the property and threaten the tenant. The landlord has threatened the tenant so many times that the police will not come to the property anymore. The tenant testified that he and his girlfriend are scared to death. The tenant disputed that he told the landlord that his girlfriend would kick the shit out of the landlord but agreed that his girlfriend has "got in the landlords face a few times". The tenant testified that he ended up in hospital with a heart attack.

The tenant testified that they had no choice but to move into the barn but they have no power, water or toilet. They have to go to the coffee shop to use their facilities. The tenant disputed that there is a bucket of urine and feces outside the landlord's window and if there is one there the landlord must have put it there.

The landlord called her witness KH. The witness is the landlord's sister. The witness testified that she witnessed the guns in the tenant's possession. Nine police officers surrounded the barn and came out with weapons in zip lock bags. The witness describes that the last time she was on the property she pulled up in her truck and there was another vehicle parked. They asked the tenant to move the vehicle and he came out and called the landlord a cunt and said she was fucking dead and he would make sure things happened to her and the farm. The witness said she asked the other woman to move her truck and this woman said no and told the witness she was fucking dead. The witness testified that she had to wait to get her truck out until the tenant's company left. She witnessed the tenant's girlfriend swearing at the landlord and flicking her on the nose. The tenant's girlfriend also came at the witness's truck and banged on it while calling the witness names. The tenant's girlfriend also unplugged the power to the witness's truck. The witness testified that she saw feces being dropped outside the landlord's door, feces in the barn along with used toilet paper. The witness testified that the tenant came out of the barn with a bat and was calling the landlord a cunt. The witness testified that they used to come and collect eggs on the farm but lately there are hardly any eggs and the witness believes the tenant is stealing them.

The tenant declines to cross examine this witness.

The landlord calls her second witness CC. This witness is the landlord's common law partner. The witness testified that he has seen the tenant come out of the barn and dump urine outside the landlord's bedroom window and has also seen feces in the yard. The tenant called the landlord the C word. The police have been out many times, there is garbage strewn around and uninsured vehicles owned by the tenant left on the property. The witness testified that he has seen the tenant and his girlfriend threaten the landlord and that the landlord is afraid and has boarded up doors in her home to prevent the tenant getting in to hurt the landlord. The witness testified that family and friends including his children are uncomfortable visiting because of the tenant. The witness testified that he has seen the tenant running his vehicles to power the barn and this creates exhaust fumes for the landlord's animals. There also seems to be no eggs for

sale anymore. The witness testified that he has witnessed the tenant having a propane heater in the barn but states this does not have an open flame.

The tenant declines to cross examine this witness.

The tenant calls his witness DW. DW is the tenant's girlfriend living in the barn with the tenant. The witness testified that the landlord got the police to kick them out of the unit; the landlord has increased the rent, has towed the tenant's vehicles and comes out to the barn taking pictures and harasses the tenant. The witness testified that she has called the police many times. The witness testified that the landlord has threatened the tenants and witness with people and there was a man at their door who threatened to clear all their stuff out of the barn. This man tried to break into the barn and threatened to hurt them. The police have been to warn the landlord off. Just today the landlord told the tenant that there is a tow truck coming to take the tenant's vehicles again.

The landlord asked the witness if the witness took a bat and smashed the windows in the barn. The tenant responded that they did not do this and there is no broken glass. The landlord asked if the witness has three uninsured vehicles on the property. The witness responded yes in the back where she is staying. The landlord asked if the witness is a legal tenant of the landlords. The witness responded that she is staying with her husband and it should not matter as she moved in with her husband and her husband was trying to fix the barn up for her to live in.

I asked the witness if she recalls approaching the landlord with her hands out and flicking the landlord's nose. The witness responded that she has never touched the landlord except once when she gave her a back rub. I asked the witness if she recalled swearing at the landlord or the landlord's sister. The witness responded that she has sworn at them.

Analysis

An early end to a tenancy under s. 56(2) of the *Residential Tenancy Act (Act)* is only given in extraordinary circumstances and only when the applicant can show that the situation is so extreme that it would not be reasonable to require the normal one Month Notice to End Tenancy given under section 47 of the *Act*. An early end to tenancy is granted and an Order of Possession for the rental unit is given if the tenant or persons 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.

I have considered the evidence before me and find the landlord's evidence to be compelling that the tenant has made threats against the landlord, made the landlord feel unsafe on her property, and potential has the risk of harm from the tenant or his girlfriend permitted on the property by the tenant. While I accept that there exists an acrimonious relationship between the parties, I find this has been extenuated by the tenant and his girlfriend's behaviour. It is unclear how the police were able to remove the tenant and his girlfriend from the main house; however, I am satisfied that the level of animosity directed at the landlord by the tenant and his girlfriend is significant enough to have adversely affected the quiet enjoyment, security, safety or physical well-being of the landlord and her family. I further find that there is a likelihood of damage being done to the landlord's property with the disposal of urine and feces which can only be construed as unhealthy and unhygienic particularly where there are animals and children.

I find the landlords evidence compelling concerning the actions of the tenant and his girlfriend which have significantly interfered with and unreasonably disturbed the landlord and with this in mind I find it would be unreasonable and unfair for the landlord to wait for a One Month Notice to End Tenancy under section 47 of the *Act* to take effect, as in doing so it may escalate the disturbances and risk of harm to the landlord and her family.

Conclusion

The landlords' application for an Order to End Tenancy Early is granted. I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

As the landlord's application is successful I find the landlord is entitled to recover the \$50.00 filing fee from the tenant. A copy of the landlord's decision will be accompanied

by a Monetary Order for **\$50.00**. The Order must be served on the Respondent. If the Respondent fails to pay the Order, the Order is enforceable through the Provincial Court (Small Claims Court) as an Order of that Court.

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: September 21, 2015

Residential Tenancy Branch

