



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 a Landlord's Application for Dispute Resolution (the "Application") to end the tenancy early and obtain an Order of Possession, and to recover the filing fee from the Tenant.

Both parties appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application by personal service and the Landlord's documentary and digital evidence. However, the Tenant denied receipt of one page of evidence that related to an e-mail from a police officer.

As the Landlord had provided this one page of evidence outside of the time limits set by Rule 3.14 of the Rules of Procedure and this evidence was not before the Tenant, I declined to consider it. However, I informed the Landlord that he was not barred from providing this evidence into oral testimony during the hearing.

The Tenant confirmed that he had not provided any documentary evidence prior to the hearing as he was currently in hospital undergoing psychiatric treatment.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present relevant evidence on the issue of the tenancy ending, make submissions to me, and cross examine the other party on the evidence provided. I have considered the evidence provided by the parties in this case but I have only documented that evidence which I relied upon to make findings in this decision.

Issue(s) to be Decided

Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The parties agreed that this tenancy started on May 24, 2015 for a fixed term of three months after which it continued on a month to month basis. A written tenancy agreement was signed for the rental of a single room in a multi-dwelling residential home. Rent is payable in the amount of \$430.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$215.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that on October 16, 2015 he received a complaint from one of his renters who was renting a room in the same house as the Tenant. The Landlord testified that the renter's complaint was about the Tenant making loud noise, not cleaning his dishes, and that something was wrong with the Tenant.

The Landlord testified that when he visited the rental unit to meet with the renter he was verbally and physically confronted by the Tenant. The Tenant shouted to him to leave the rental unit and that he was not allowed to be there as he had not given proper notice. The Landlord testified that the Tenant looked aggressive and agitated. The Landlord testified that he attempted to explain to the Tenant that he was there to see another renter and to fix a 'maintenance issue' in an effort to calm him down.

The Landlord explained that at this point he activated the video camera on his phone and started to record the incident. The Landlord provided a copy of this into evidence which I viewed during the hearing. The video shows the Landlord and Tenant in a verbal and physical altercation. The video shows the Tenant asking the Landlord to leave the property in an aggressive manner using swear words.

The Landlord testified that the video footage continues after he handed his phone to the renter to record the incident just in case the Landlord was assaulted. After this point the video shows both parties falling to the ground at the entrance to the property. At this point, the Landlord explains to the Tenant that he will leave and the Tenant kicks the Landlord several times and tells him to get out.

The Landlord testified at no point was he aggressive to the Tenant and was trying to help him to understand that he was there to help him. The Landlord explained that he called the police who then attended the rental unit and detained the Tenant. The Landlord also pointed to a police statement that had been provided by the renter who witnessed the physical altercation that took place between the Landlord and Tenant.

The Landlord explained that the Tenant was known to the police as a mental health patient and for this reason he was taken to a mental health hospital where he has since remained under mental health legislation.

The Landlord testified that due to the Tenant's aggressive nature and his propensity for violence, he fears that when the Tenant returns from the mental health hospital he will continue to cause a significant disturbance in the house both to other renters and to the Landlord. The Landlord testified that he fears for his safety because the Tenant blames the Landlord for the reason he is being detained in the mental health hospital.

The Landlord then pointed me to several emails sent to the Landlord from other renters living in the same home who had learnt about the incident. They all write that they fear for their safety if the Tenant returns back to the rental unit. In two of the emails the renters write that they fear that they will have to move out of the property if the Tenant returns.

The Landlord then provided oral evidence of phone conversation logs he had with the police and the hospital staff who were treating the Tenant. The Landlord testified that he had spoken to several nurses, doctors, and the Tenant's advocate who had all explained that the Tenant was a danger and that if he were to return to the rental unit, there would be a strong possibility that further violent incidents would occur and that the police should be called straight away.

The Landlord submitted that he was very concerned about the return of the Tenant because he had a history of mental health problems which would likely result in further violent incidents in this tenancy. Therefore, he seeks to end this tenancy early.

The Tenant disputed the Landlord's testimony submitting that the notes the Landlord testified to that he made regarding conversations he had with hospital staff were not provided into evidence. Therefore, this was hearsay evidence. The Tenant also submitted that the names of the hospital staff the Landlord had mentioned during this apparent conversations were not the names of the staff he was being treated by.

The Tenant disputed the Landlord's oral evidence that the Tenant had a record and history of violence. The Tenant submitted that since he was admitted into the psychiatric ward for treatment, he has made good progress in getting better and this should be taken into consideration. The Tenant explained that he was willing to leave the rental unit but the Landlord would have to compensate him for this.

The Tenant stated that he had gone through some traumatic events of late including sexual abuse. The Tenant submitted that if he posed such a danger to the Landlord or to other residents of the property then there would have been a court order preventing him from coming back to the rental unit. The Tenant also submitted that the Landlord was not scared of him as he visited the hospital in person to serve him paperwork for this hearing.

When the Tenant was asked about the altercation between him and the Landlord, the Tenant submitted that he did not violently assault the Landlord and that the Landlord was equally as responsible because he would not leave the rental unit. The Tenant said that he knew it was the Landlord and that the altercation would not have escalated had the Landlord left. The Tenant submitted that he was provoked by the Landlord.

When the Tenant was informed that the Landlord did not have to give written notice to enter the common areas of a rental property, the Tenant explained that he was not aware of this. When the Tenant was asked why he did not want the Landlord there or why he did not call the police or remove himself from the situation, the Tenant replied that he should not have to do this because the Landlord should have left. However, because the Landlord did not leave, this provoked him.

The Tenant stated that the renter in the video whom the Landlord came to see can be seen as a big person who was not afraid of him. The Tenant pointed out that in the video this renter explains that if he gets involved in the altercation both the Landlord and Tenant may end up getting hurt. The Tenant submitted that the concerns and alleged fears of the residents are not valid.

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the Landlord when the circumstances of the tenancy are such that it is unreasonable or unfair to a Landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause. I have considered the evidence of both parties in this case and I make my findings based on the balance of probabilities as follows. Section 56 (2) of the Act provides the circumstances in which a Landlord may apply to end the tenancy early.

"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,"

[Reproduced as written]

In this case, I agree with the Tenant that the Landlord's oral evidence presented in this hearing regarding conversations he had with the hospital staff about the threat the Tenant poses results in hearsay evidence. Therefore, I have placed little evidentiary value on this evidence. However, the evidence that I am convinced by that this tenancy should end is the video footage provided by the Landlord into evidence. This is because the video footage is undeniable and therefore, the best evidence in this case.

I find the video footage does show that the Tenant displayed an aggressive and violent manner towards the Landlord. The Tenant used abusive language towards the Landlord and threatened him with violence if the Landlord failed to leave the rental unit. In contrast, the Landlord did not shout or use abusive language towards the Tenant and I find the Landlord's actions, short of him leaving the rental suite, were not provocative in any way. On the contrary, I find the Landlord tried to calm down the Tenant without success.

Although I am unable to determine from the video footage which party caused the physical altercation between them, I find that the situation inevitably escalated to a physical level which is unacceptable in any situation. Notwithstanding the Tenant's argument that the Landlord could have easily left the rental unit after he was asked to do so several times, I find that equally the Tenant could have easily left the property if he did not want to be in the presence of the Landlord who was not there to see the Tenant. In the alternative, the Tenant could have also called the police to ask for the

Landlord's removal. However, the Tenant did neither, choosing instead to pursue a more aggressive approach to remove the Landlord.

While I placed little evidentiary weight on the Landlord's oral testimony that the hospital staff where the Tenant is currently being treated are concerned the Tenant will cause further violence if he is to return to the rental unit, I find that this evidence, combined with the email evidence from other renters at the rental property, cannot be ignored. On the balance of probabilities, I am satisfied that if the Tenant were to display the same level of aggression and violence as shown in the video footage, then the residents of the property and the Landlord have a valid cause for concern.

As a result, I am satisfied that the Landlord has met the burden to prove that the Tenant significantly interfered with the Landlord and that if the tenancy continues there is a further risk that the Landlord's and other resident's safety may be seriously jeopardised. Based on the foregoing, I grant the Landlord an Order of Possession which is effective two days after service on the Tenant. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

As the Landlord has been successful with his Application, I also find the Landlord is entitled to the cost of filing the Application. As a result, the Landlord may retain \$50.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Landlord has met the burden to prove that the tenancy should end early and is granted a two day Order of Possession. The Landlord is also granted the filing fee from the Tenant's security deposit.

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: November 17, 2015

Residential Tenancy Branch

