



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUNCAN KIWANIS VILLAGE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ET

Introduction

The landlord applies for an order ending the tenancy early, before the expiration of the usual one month Notice to End Tenancy set by s. 47 of the *Residential Tenancy Act* (the “RTA”).

Both parties attended the hearing, the landlord by its representatives, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has committed acts justifying the ending of the tenancy. Does it demonstrate that an early end to the tenancy is warranted?

Background and Evidence

The rental unit is a bachelor apartment in a fifteen unit, seniors oriented, low cost housing complex. The landlord is a non-profit entity operated by a service organization.

The tenancy started in May 2015. The current monthly rent is \$454.00, due on the first of each month. The landlord holds a \$100.00 security deposit.

The landlord alleges a single incident giving rise to the application. At about 900 a.m. on July 28, Mr. B.J., the landlord's maintenance man, was verbally accosted and pushed by the tenant over the tenant's accusation that Mr. B.J. had been slamming the dumpster lids to the tenant's annoyance.

Mr. B.J.'s account of the incident, corroborate by Mr. P.H. who happened to be on the phone with Mr. B.J. at that time, and by another tenant, Mr. T.L. who was present, indicates that the tenant used extremely abusive language toward Mr. B.J. and uttered veiled threats should the slamming continue.

Mr. B.J. testifies that after the language and threats the tenant pushed him in an effort to provoke a physical response.

Later that morning, after a meeting between Mr. B.J. and his superiors, the police were summoned. They spoke to the tenant. No charges were laid.

Mr. B.J., Mr. T.L. and another tenant Ms. V.M. who saw the respondent tenant that morning, all agree that the tenant appeared to be intoxicated or under the influence of something.

The tenant does not deny the incident but for the allegation that he pushed Mr. B.J. He says that he was under "heavy medication" at the time for "ant-depression" and "anti-anxiety." He says that he apologized later and that his doctor has adjusted his prescription and now its "all OK."

The tenant says the police merely told him to stay away from Mr. B.J. He says that it was an isolated incident and that it won't happen again.

Analysis

The ending of a tenancy is a very serious matter. Clear and probative evidence will be required of a landlord intending to show cause for eviction.

The landlord applies for an early termination of this tenancy. Section 56 of the *RTA* sets out the requirements for such remedy,

Application for order ending tenancy early

56 (1) A landlord may make an application for dispute resolution to request an order

- (a) 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) granting the landlord an order of possession in respect of the rental unit.

(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.

Subsection (2) of s. 56 sets out a two step process. First it must be determined whether one or more of the listed causes for termination have been shown. Each of the five causes listed in s. 56(2) are also valid causes for a landlord to issue to the tenant a one month Notice to End Tenancy under s. 47 of the *RTA*.

Second, it must be shown that it would unreasonable or unfair for the landlord to have to wait the normal one month notice period under s. 47.

In the particular circumstances of this case I find that the landlord has not satisfied the first step. It has not shown sufficient cause.

The tenant's abusive language could well be considered to be of a nature to disturb those within earshot, yet that language must be shown to have "unreasonably disturbed" another occupant or the landlord (which by implication includes the landlord's employees like Mr. B.J.).

There is little evidence of the effect of the language on other tenants. Mr. B.J., who was on the phone to Mr. P.H. at the time, told Mr. P.H. it was not necessary to call the police. He said, "I think it's OK" or "it should be fine." That would indicate that Mr. B.J. did not take the tenant's vulgar language and threats seriously. Mr. B.J. testifies that he has been "very sociable" with the tenant since the incident.

I conclude that the tenant's language and threats have not been shown to have significantly interfered with or unreasonably disturbed another occupant or the landlord, namely, Mr. B.J.

A tenant showing physical violence toward another occupant or the landlord will receive very short consideration on an application of this sort. Such conduct is rarely countenanced. Here, I consider it more likely than not that the tenant did push Mr. B.J. At the same time, Mr. B.J. whom I find to be by far the larger man, did not immediately summon the police. It was Mr. P.H.'s idea to do so at the later meeting. Though Mr. P.H. has filed a signed statement that Mr. B.J. appeared "visibly shaken and somewhat distraught" at their later meeting. Mr. B. J. did not give that evidence and he is the one best able to say whether he was seriously affected by the push. It may equally be that Mr. B.J. did not consider the tenant's aggression to be overly disturbing. The lack of evidence on that point prevents an affirmative finding of fact.

Last, and certainly not least, is the matter of the tenant's medication. A tenant voluntarily under the influence of alcohol or a mood altering chemical will not receive much benefit of the doubt at these hearings. But this tenant's undisputed evidence is that his attitude that morning was the result of prescription medication issues which have now been resolved. That is consonant with the conduct reported. Some leeway must be given for such situations. Additionally, though there was some mention of the tenant having generally an intimidating manner, the incident in question appears to be an isolated one.

In regard to the second step of this process, given the foregoing, it is not necessary to embark on an analysis as the first step has not been met. I note that at the conclusion of the hearing it was noted by me that the second step had not been satisfied. It was not unreasonable or unfair for the landlord to wait for the s. 47 notice period to end.

Conclusion

The landlord's application is dismissed.

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: August 22, 2016

Residential Tenancy Branch