



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

This hearing dealt with the landlord's application filed July 7, 2017 under the *Residential Tenancy Act* (the "Act") seeking an order of possession to end the tenancy early and to recover the cost of the filing fee.

The tenant attended the hearing. The owner of the corporate landlord, AR, and a representative of a non-profit society responsible for managing the rental building, PH, also attended. Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Service of the landlord's application and notice of hearing was not at issue. The tenant had received the landlord's evidence. The landlord had not received the tenant's evidence. The tenant testified that he delivered his evidence to the non-profit society. PH said he had not been there to check. The landlord did not seek an adjournment on this basis.

Issue to be Decided

Is the landlord entitled to end the tenancy early and obtain an order of possession under section 56 of the Act?

Background and Evidence

There was no written tenancy agreement in evidence. It was agreed that this tenancy began in June of 2016 and that rent is \$495.00 monthly. The tenant advised that this amount is paid directly on his behalf and he is therefore not aware of the specific date it

is due. A security deposit of half this amount was paid at the start of the tenancy and remains with the landlord.

Landlord's submissions

The landlord's application, filed July 7, 2017, alleges that the application is urgent and the tenant is an immediate threat to life and/or property. In the details section the landlord has written: "The tenant agreed to remove all weapons for his room by July 5. We gave him proper notice to search his room. IN the search, he had 2 swords that were seen and pictures are available. When mentioned to him, he started screaming and chasing us out of the building. The tenants/landlord are scared to enter the building and it is a very unsafe environment" (reproduced as written).

The landlord's submissions at the hearing were difficult to understand, in part because landlord did not set things out chronologically. Also, the landlord did not appear to understand that I do not have any materials concerning prior applications around this tenancy before me.

The landlord submitted only one document in evidence: a photograph of what the landlord alleges is a martial arts weapon. The photograph has been copied onto paper and is in black and white and is very difficult to make out. The landlord said that it had been taken quickly on a cell phone while the photographer was rushing out of the tenant's rental unit.

The landlord testified that a settlement had been reached between the parties at a prior dispute resolution hearing, the file number for which is reproduced on the cover page of this decision. Although the landlord did not include that settlement in evidence, he advised the agreement provided that the tenancy would continue on the basis that the tenant would remove all martial arts associated or related weapons by July 5, 2017. The tenant agreed with the landlord's account of the settlement agreement.

The landlord testified that after the settlement was reached, he issued a notice of inspection, and attended to inspect the tenant's rental on July 8, 2017. He said that he saw a wooden knife, and that the tenant rushed him out of the unit. The landlord was upset that the tenant had breached the agreement and was also surprised. The landlord said: "All the [the tenant] had to do was hide it [the knife]."

The landlord also said that shortly after the tenant posted fliers complaining about the landlord and the management organization, alleging that the landlord is a slumlord and the organization is complicit for “protecting” the landlord.

The landlord further said that the tenant has become irate, that the police have been called, and that the police told him the tenant had been arrested twice for assaulting residents. PH testified that he spoke with a tenant at the rental unit building the day before the hearing who told him that she wants to move out because she does not feel safe. The landlord also read aloud what appeared to be submissions from the prior hearing, to the effect that on March 8, 2017 the tenant threatened another tenant with a sword, that on April 5 and May 20 he was also aggressive, on June 18 and October 26 he assaulted someone. The landlord did not specify the year in which these incidents were alleged to have occurred and when questioned about the October 26 allegation he clarified that he was referring to October of 2016.

Tenant's submissions

The tenant in written submissions alleges that the landlord is retaliating against him for having complained about conditions at the rental unit, including bringing an application to the RTB about the mailboxes. He also sets out awards and accomplishments. The tenant writes that he is past president and instructor at a Taekwondo club, and engages in this martial art for exercise and mediation. He testified that he has never been arrested for or convicted of assault.

The tenant also submitted clear photographs of what he says are the same knives the landlord photographed, although because the landlord's photograph is so unclear, it is difficult to know if the tenant's photographs are of the same things. The tenant's photographs show two unthreatening balsa wood souvenir wall hangings. In his written submissions the tenant says: “Let's get serious. I would pick up a kitchen knife in self-defense before these wall hangings . . . These souvenirs have zero martial arts training value . . . How does a person even grip a half-stick?”

The tenant also submitted a letter from another tenant in the building stating that he has resided there for a year and has never heard the respondent tenant threaten or attack any other resident, and that many of the residents are unhappy with the caretaker, E, because he gets angry when drunk and does little to keep the place clean. The tenant also submitted a photograph of E making an obscene gesture at the camera.

The tenant advised that the landlord has issued another notice to end tenancy, which the tenant has applied to dispute, and that the hearing for that is scheduled for September 27, 2017. The file number of that matter is also reproduced on the cover page of this decision.

The landlord was not aware of what sort of notice it had issued the tenant or of the scheduled hearing. The tenant said that he had served the landlord with the application and notice of hearing. The landlord was advised to contact the Residential Tenancy Branch ("RTB") for another copy of the application and notice of hearing.

The tenant asked for reimbursement for the costs of photocopying, registered mail, etc., because the landlord's allegations are libelous and unsubstantiated. This is not the tenant's application, however, and the Act does not provide for this in any event.

Analysis

Section 56 of the Act allows for the early end of tenancy under certain circumstances (including that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, adversely affected the safety of another occupant, or put the landlord's property at risk) and it would be unreasonable and unfair to the landlord to wait for a notice to end tenancy under s. 47 of the Act.

Although the landlord stated that PH was attending in order to substantiate the landlord's allegations, PH's testimony did not clearly do so.

The landlord's one photograph is unclear and does not establish that the tenant had a martial arts weapon in his room. A clear breach of that agreement would still not necessarily justify an early end to tenancy under s. 56. There is not sufficient evidence before me upon which to end the tenancy under s. 56. There is not sufficient evidence that the tenant has seriously threatened life or property.

Nor is there sufficient evidence to establish that it would be unfair to require the landlord to apply under s. 47 to end the tenancy. The idea that it would be unfair for the landlord to wait to end the tenancy under s. 47 is not consistent with the landlord's claim that the tenant's aggressive behavior started in October of 2016. One would think that the

landlord would have applied to end the tenancy long ago if the tenant's conduct has been that problematic.

The landlord does not appreciate the tenant's public criticism. He said at the hearing that he has recently bought the building and more recently hired the non-profit agency to ensure it is managed well. The tenant has committed not to posting any additional flyers critical of the landlord.

Conclusion

The landlord's application is not successful. This tenancy will continue until it is ended in accordance with the Act.

As the landlord's application is not successful, I do not award the landlord the application filing fee.

The landlord is reminded that he may contact the RTB or review its website to better understand the processes and requirements involved in an application to end tenancy and any other matter.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 11, 2017

Residential Tenancy Branch