



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an order ending the tenancy early and an Order of Possession provided under section 56 of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing I confirmed service of hearing documents and evidence. The landlord's evidence included a USB stick containing a video. In completing the Digital Evidence Details worksheet, the landlord had indicated that she had already confirmed with the tenant that the tenant was able to see/hear the content of the digital device; however, during the hearing the landlord acknowledged that she had not done so. The tenant acknowledged to me that she was eventually able to view the content of the USB stick with the assistance of another person. Since the tenant acknowledged she was able to view the video and referred to it in making her submissions to me, I have viewed and considered the video in making this decision.

Shortly after the hearing started the parties informed me that the tenant has already vacated the rental unit and returned the keys to the landlord and had a friend participate in the move-out inspection with the landlord. The landlords requested that an Order of Possession be provided to them in any event. Under section 44 of the Act, a tenancy ends when a tenant vacates or abandons a rental unit. When a tenant vacates or abandons a rental unit, the landlord automatically regains possession of the rental unit. An order of Possession serves to order the tenant to vacate a rental unit, which the tenant has already done in this case. As such, I find the tenancy is already over and the need for an Order of Possession is moot as of this date.

The landlord requested that I proceed to consider their request to recover the filing fee paid for this application from the tenant. The tenant was not in agreement that the landlord had basis to end the tenancy early and was not agreeable to compensating the landlord for the filing fee. Accordingly, I proceeded to hear from the parties so as to determine whether there would have been sufficient grounds for the landlord to obtain an Order of Possession under section 56 of the Act had the tenant remained in possession of the rental unit.

Issue(s) to be Decided

Which party should bear the cost of the filing fee paid for this application?

Background and Evidence

The tenancy started March 1, 2016 and the rental unit was originally occupied by the tenant alone. Later that year, the tenant requested and the landlord agreed to provide additional space to be used with the rental unit in exchange for a higher monthly rent of \$1,100.00 payable on the first day of every month and the tenant's adult daughter with special needs moved in with the tenant. The rental unit is a basement suite with the one of the landlords, referred to by initials MN, lives in the unit above the rental unit.

The landlord pointed to two assaults, on July 6, 2017 and July 11, 2017 and attempted to introduce other grievances concerning the tenant or her daughter during the tenancy as the basis for making this Application; however, since this application pertains to a request for an early end of tenancy I instructed the landlord to limit her submissions to that which pertain to the most dire of circumstances that would point to the need for an order to end the tenancy early. Below, I provide a summary of the submissions provided to me by the parties:

July 6, 2017

On this date, the landlord wanted to gain entry to the rental unit to reset the electrical breaker(s) as the power had gone out in her unit. The tenant sent a text message to the tenant to advise her of such, as agreed upon during a dispute resolution hearing that took place on February 28, 2017 (file number provided on cover page of this decision). The landlord proceeded to knock on the door of the rental unit, identify herself, and then open the door. The tenant's daughter then shoved and screamed at the landlord. The landlord proceeded to reset the electrical breaker(s) and left. The tenant sent a text message to the tenant to advise her of the situation.

The police were called by the landlord. The landlord proceeded to file an application for a restraining order on July 7, 2017. A hearing was set for August 3, 2017 but the landlord subsequently cancelled that hearing since the tenant and her daughter had already moved out by that date.

According to the tenant she was at work when the landlord entered the rental unit but was apprised of the situation by her daughter. The tenant was told by her daughter that she had wedged herself in the doorway and the landlord shoved past her and proceeded to reset the electrical breaker and then left. The tenant's daughter video tapped the interaction but it was not provided as evidence.

July 11, 2017

The landlord had scheduled a viewing of the rental unit with a prospective tenant since the tenancy had been set to end on September 1, 2017. Although the tenant had tried to have the showing cancelled the landlord did not agree to cancel and proceeded with the showing. At the time in question, the landlord knocked on the door, identified the reason she was entering and then proceeded to open the door with her key. The tenant was on the other side of the door and tried to close the door but the landlord's foot became wedged in the door. The landlord had anticipated there would be animosity with the tenant and had asked the prospective tenant to video tape the event. The video tape was provided as evidence.

The tenant testified that she had attempted to cancel the showing because the landlord's previous entry had set off her daughter's anxiety. When the landlord tried to open the door the tenant stopped it because her young grandson was behind the door and she was trying to protect him. The landlord placed her foot so that it would get in the way and the landlord is responsible for getting her own foot hurt. The tenant pointed to the video and that the landlord can be heard calling the tenant or her daughter a "whacko" at the start of the video.

Both parties pointed to the other party as causing them to fear for their safety while on the property.

It was clear that this tenancy relationship had become extremely toxic and the parties had a number of grievances against the other party; however, as I indicated above, I limited their submissions to the allegations of assault on July 6 and July 11, 2017.

Analysis

Section 56(2) of the Act permits an Arbitrator, as delegated by the Director, to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued and provide the landlord with an Order of Possession. 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, or a person permitted on the property by 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. The burden is high as this provision is intended to apply in the most severe of circumstances.

I accept that an assault upon a landlord by a tenant, or a person permitted on the property by the tenant, is often grounds for early end of tenancy under section 56 of the Act. I proceed to consider whether the landlords satisfy me that the tenant, or her daughter, assaulted the landlord.

The events of July 6, 2017 were in dispute. Allegations of shoving were made by the landlord against the tenant's daughter and vice-versa. I find the landlord has satisfied me, on the balance of probabilities, that it is more likely that the tenant's daughter shoved the landlord than the other way around considering: the police were called by the landlord; the landlord proceeded to file for a restraining order against the tenant's daughter the following day; and, the tenant claims that a video of the incident exists but did not produce it as evidence.

As for the incident of July 11, 2017 I find I am not satisfied the tenant assaulted the landlord. Upon viewing the video provided as evidence, I note that the landlord knocked on the door and then almost immediately attempted to gain entry, leaving very little time for the tenant to open the door voluntarily or make sure nothing was in the way of the door. It is also apparent to me that the landlord anticipated the tenant would attempt to interfere with the landlord's ability to enter the rental unit and the landlord purposefully placed her foot inside the door so as to prevent the tenant from closing the door, which is exactly what happened, causing the landlord's foot to be wedged between the door and the threshold. Since the landlord anticipated this action, I am of the view that the landlord placed herself in a situation where it was reasonable to expect her foot would become wedged in the door and she did not seek a less harmful route. At one point in the video the parties refer to calling a peace officer, which was not done. Also of consideration in finding the tenant was not responsible for an assault on July 11, 2017 is that the landlord did not proceed to file an application for restraining order against the tenant like she did against the tenant's daughter after the incident of July 6, 2017. I am of the view that the incident of July 11, 2017 is a dispute concerning the landlord's right to enter the rental unit and not an assault.

Although the landlord proceeded to file an application for a restraining order on July 7, 2017 after the assault by the tenant's daughter, the landlord did not proceed to file this Application for Dispute Resolution until July 12, 2017, after the landlord was denied entry on July 11, 2017. I noted that in her written submissions and oral testimony the landlord repeatedly attempted to introduce evidence concerning the tenant's attempts to

interfere with the landlord's ability to enter the rental unit, which I find is not a basis for an order for an early end of tenancy under section 56 of the Act. Accordingly, I find it likely that the filling of this Application for Dispute Resolution was motivated by a combination of events, not all of which are worthy of an order to end the tenancy early. Therefore, I award the landlords one-half of the filing fee paid for this application, or \$50.00.

Provided to the landlord is a Monetary Order in the amount of \$50.00 to serve and enforce upon the tenant.

Conclusion

The tenant has already vacated the rental unit bringing the tenancy to an end and an Order of Possession is not required or provided with this decision.

I have found that there was some merit for making this application and I have awarded the landlords recovery of one half of the filing fee, or \$50.00. The landlords are provided Monetary Order in the amount of \$50.00 to serve and enforce upon the tenant.

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 10, 2017

Residential Tenancy Branch