



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

On July 14, 2017, the Landlord submitted an Application for Dispute Resolution for an early end of tenancy and to recover the cost of the filing fee. The matter was scheduled as teleconference hearing. The Landlord and the Tenant attended the hearing.

Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Preliminary and Procedural Matters

The Landlord testified that he served the Tenant with a copy of the evidence that he provided to the Residential Tenancy Branch. The Landlord testified that he served the documents to the Tenant in person on August 1, 2017.

The Tenant testified that he only received the Notice of Hearing and fact sheet from the Landlord.

Section 56 of the Act states that if an order is made for an early end of tenancy, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

The hearing proceeded and the parties provided solemnly affirmed testimony.

Issue to be Decided

- Does the Landlord have cause to end the tenancy early?

Background and Evidence

The parties testified that the tenancy began in February 2017, as a month to month tenancy. Rent in the amount of \$800.00 is to be paid by the first day of each month. The Tenant paid a \$400.00 security deposit to the Landlord.

The Landlord is seeking an early end to the tenancy due to the Tenant assaulting his daughter.

The Landlord testified that an altercation took place on July 1, 2017, where the Tenant picked up a stick and struck his daughter on the left wrist causing her to bleed and lose skin.

The Landlord's daughter testified that she was assisting her father check the electrical fuses at the rental property, when the Tenant became verbally abusive and called her names. She testified that she started crying and informed her father who confronted the Tenant. The Landlord's daughter testified that she was upset and confronted the Tenant about his behaviour. She testified that the Tenant picked up a stick approximately two inches in diameter and swung it towards her, striking the spindles of the stair railing. She testified that the Tenant swung the stick again and hit the railing. She testified that the Tenant swung the stick a third time striking her on the left wrist.

The Tenant testified that part of the stick broke off prior to the Tenant striking her and the jagged part of the stick hit her on the wrist. She testified that she was standing on the stairs approximately three feet away from the Tenant when she was struck. She testified that she was yelling at the Tenant and spit may have unintentionally landed on the Tenant.

The Landlord's daughter testified that the police were called and they attended five minutes later to investigate.

The Landlords testified that the police have been at the rental property more than 20 times regarding concerns they have with the Tenant's behaviour. The Landlord testified that the Tenant has mental health issues and has made threats towards the Landlord.

The Landlord provided documentary evidence of a photograph of part of the stick that was used in the assault and photographs of the injury to his daughter's wrist.

The Landlord seeks an early end to the tenancy and requests an order of possession.

In response to the Landlord's testimony and evidence, the Tenant acknowledged that the police have been to the rental property at least 20 times. He testified that the parties have an upcoming dispute resolution hearing related to a notice to end tenancy that was issued by the Landlord for other reasons.

The Tenant testified that on the day in question, the Landlord was checking fuses to intentionally harass him. He testified that they turned his power off. The Tenant acknowledged that he picked up the stick which he referred to as a plunger handle. The Tenant testified that he swung the stick with his left hand and hit the railing and caused a small dent in the railing.

The Tenant denied swinging the stick three times and denied striking the Landlord's daughter. The Tenant testified that he believes that the Landlord's daughter intentionally scratched her arm against the house and is blaming it on him.

The Tenant testified that the Landlord is lying and continually harasses him. He stated that he wants to move out of the rental unit. He testified that he suffers from depression.

The Landlord's daughter testified that the Tenant assaulted her again two weeks ago. She testified that her father gave notice to enter the suite to retrieve an item and that she was present when an altercation developed where the Tenant swore and punched her in the chest. She testified that the police are investigating the incident.

Analysis

Section 56 of the *Act* states that a Landlord may make an application for dispute resolution to request an order to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 and granting the Landlord an order of possession in respect of the rental unit.

Under section 56 of the *Act*, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, the Tenant or a person permitted on the residential property by the Tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property,

- 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
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, and
- 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 to take effect.

Based on the evidence above, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the Landlord.

While I note that there is opposing testimony on whether or not the Tenant struck the Landlord's daughter, I find that the Tenant intentionally picked up a stick and swung it towards the stairs where the Tenant's daughter was standing. I accept the Landlords daughters' testimony that she was approximately three feet from the Tenant.

I find that the Tenant acted out in anger. I find that by picking up the stick and swinging it towards the Landlord's daughter, the Tenant engaged in inappropriate and dangerous conduct. The Tenant testified that he left a small dent on the railing.

I find that the Tenant's conduct has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the Landlord. Therefore I am ordering that the tenancy will end.

Based on my concerns surrounding other reported conduct of the Tenant prior to the hearing, along with the volume of police involvement at the rental property, I find 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 to take effect.

I find that the Landlord is entitled to an order of possession, effective one day after service on the Tenant pursuant to section 56 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order that the Landlord can retain \$100.00 from the Tenant's security deposit in satisfaction of the application fee.

Conclusion

The Tenant 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 and has seriously jeopardized the health or safety of the Landlord.

The tenancy is ending.

The Landlord is granted an order of possession effective after one (1) day service on the Tenant.

The Landlord can retain \$100.00 from the Tenants security deposit in satisfaction of the application fee.

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 15, 2017

Residential Tenancy Branch