



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an early end to this tenancy and an Order of Possession pursuant to sections 55 and 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's building manager (the landlord), the tenant and the tenant's agent attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant's agent stated that she would be representing the tenant.

While I have turned my mind to all documentary evidence, including witness statements and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant's agent acknowledged receipt of the Application for Dispute Resolution (Application) and evidence which was sent by registered mail to the rental unit on January 13, 2017. In accordance with sections 88 and 89 of the *Act*, I find the tenant has been duly served with the Application and landlord's evidence.

The tenant's agent testified that they sent their evidence to the landlord by way of registered mail on January 22, 2017. The landlord confirmed receipt of the tenant's evidence. In accordance with section 88 of the *Act*, I find the landlord is duly served with the tenant's evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the tenant posing an immediate and severe risk to the residential premises?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Written evidence was submitted that this tenancy began on May 01, 2014, with a monthly rent of \$640.00 due on the first day of each month. The landlord confirmed that they continue to retain a security deposit in the amount of \$320.00.

A copy of a witness statement from an occupant who lives above the tenant, dated January 03, 2018, was provided in evidence by the landlord. In this statement the occupant states that the tenant called her about a misunderstanding regarding a freezer and proceeded to call her and her son rude names and then continued to call after the occupant told the tenant to stop calling. The occupant states that she had to block the tenant's phone number. The occupant also states that when her grandchildren were visiting her in November 2017, the tenant banged loudly on his roof (the occupant's floor) and scared her grandchildren. The occupant goes on to state that on December 20, 2017, the tenant was banging on the occupant's door at 12:30 a.m. and yelling obscenities because of noise that came from the occupant's rental unit earlier in the evening. The occupant states that she is afraid of what the tenant will do next.

The landlord also provided a written statement indicating that he has cautioned the tenant about their behaviour verbally when receiving a complaint. The landlord further states that he is concerned about the tenant's escalating aggressiveness towards the occupant who lives above him. The landlord stated that the tenant told him that he had an assault charge against him due to a road rage incident, which heightened the landlord's concern regarding the tenant's aggressiveness towards the occupant and led to the landlord applying to end this tenancy early.

The landlord also provided a copy of an incident report regarding the tenant banging on his roof (the occupant's floor) in November 2017. In this incident report the landlord states that the tenant called him after the incident and stated that if he had to deal with the occupant's noise himself he might be charged with assault. The landlord states, in this incident report, the tenant is going to court for a previous assault charge.

The tenant submitted a written statement in evidence in which his agent states that the tenant is the one who is being harassed with “loud thumping, banging and things dropping “since he began his tenancy in the rental unit over three years ago. The agent states that the tenant has mental health issues and that his occasional outbursts of loud, inappropriate language and threats are just meaningless words to him and that he does not mean what he says. The agent further states that as a result of his mental health issues, “the tenant fabricates stories in his head when he has a traumatic experience.”

In this statement the agent submits that the story about the tenant being in a road rage incident is just a story in the tenant’s head and that he never assaulted an old man and does not have charges of assault against him. The agent states that the tenant did not know there were children in the occupant’s rental unit, when banging on his roof, and would not intentionally do anything to harm children. Regarding the tenant banging on the occupant’s door, the tenant was scared awake by a loud thump and felt that the occupant was provoking him.

The landlord testified he received a complaint about the tenant from an occupant who lives in a rental unit above the tenant’s rental unit. The landlord is concerned that something bad is going to happen between the tenant and the occupant due to the tenant’s aggressive behaviour. The landlord stated that due to a loud noise from the occupant’s rental unit in the night, the tenant went to the occupant’s door banging loudly on the occupant’s door, yelling and screaming. The landlord stated that the occupant is living in fear due to the tenant’s actions. The landlord submitted that when he talked to the tenant about the incident, the tenant admitted that it was wrong to go to the occupant’s door in a hostile manner.

The landlord testified that he has talked to a couple of other occupants who have not had negative interactions with the tenant. The landlord acknowledged the tenant’s agent’s written statement that the story of an assault may have been fabricated in the tenant’s head but noted that people are intimidated by this story and it makes him concerned about the tenant causing physical harm to the occupant in the rental unit above the tenant’s.

The tenant’s agent testified that the police have never been called for any of the interactions between the occupant and the tenant as it was never necessary. The tenant’s agent submitted that the tenant’s mental illness causes him to tell stories but

does not make him a physical threat. The tenant's agent stated that the tenant is small, malnourished and has a physical disability as he had broken his back in the past.

Analysis

Section 56 of the *Act* allows for a tenancy to end and an Order of Possession to be obtained on a date that is earlier than the tenancy would end if a One Month Notice was served to the tenant. An Arbitrator must be satisfied that a tenant has seriously jeopardized the health and safety or a lawful right or interest of the landlord and put the landlord's property at significant risk. The *Act* also stipulates that in such circumstances it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a One Month Notice to take effect issued under section 47 of the *Act*.

I have reviewed all allowed documentary evidence and affirmed testimony and I find the tenant does not pose an immediate and/or ongoing severe risk to the residential property. I find that the tenant has issues with anger management but there is no evidence submitted that he has caused physical harm to others in the past which would lead to the conclusion that he was capable of causing physical harm to someone in the future. I accept the tenant's agent's testimony that the tenant's mental illness causes him to fabricate stories to deal with traumatic events and that there are no assault charges pending against the tenant. I find the landlord also acknowledged in his testimony that it is very possible that the tenant's story of assault is a fabrication. I find that the landlord has testified that other occupants in the building that the landlord talked to have not had negative interactions with the tenant.

I find the tenant, through the landlord's testimony and written statement, acknowledged that his behaviour towards the occupant was inappropriate although he felt he was provoked. I find that there is no evidence or testimony that the tenant has been pursuing the occupant and attempting to significantly interfere with her since the incident when the tenant was banging, yelling and screaming at the occupant's door. Although the tenant may have unreasonably disturbed the occupant on multiple occasions, I find the landlord has failed to sufficiently prove the tenant has a pattern of violent behaviour which would make it unfair for other occupants or the landlord to wait for a One Month Notice to take effect.

For the above reasons, the landlord's Application to end this tenancy early is dismissed and this tenancy will continue until ended in accordance with the *Act*.

As the landlord has not been successful in this application, I dismiss their request to recover the filing fee from the tenant.

I note that the tenant should refrain from interacting with the occupant in any manner and if there are issues with noise from the occupant's rental unit above him, the tenant should be documenting the events and calling the landlord when appropriate to do so.

Conclusion

I dismiss the landlord's Application, without leave to reapply.

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: February 07, 2018

Residential Tenancy Branch