Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EQUITABLE REAL ESTATE INVESTMENT CORPORATION LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

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

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

The landlord's two agents, landlord MR ("landlord") and "landlord PB," and the two tenants, male tenant ("tenant") and "female tenant" (collectively "tenants"), attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he was the president and landlord PB was the residential administrator for the landlord company named in this application and that both had authority to speak on its behalf as agents at this hearing.

"Witness TR" and "witness CM" testified on behalf of the landlord as witnesses at this hearing. Both parties had equal opportunities to question both witnesses. This hearing lasted approximately 144 minutes, during which the landlord spoke for most of the hearing time.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application and the landlord was duly served with the tenant's written evidence package. Both parties confirmed that even though they received the other party's written evidence package late, contrary to the deadlines in the Residential Tenancy Branch ("RTB") *Rules of Procedure*, they had no objection to me considering the evidence in the hearing and in my decision.

Both parties confirmed that they were prepared and ready to proceed with the hearing and did not wish to request any adjournments.

The tenant confirmed receipt of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 9, 2018 ("1 Month Notice"). The effective move-out date on the notice is March 31, 2018. A copy of the notice was provided for this hearing. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice.

Preliminary Issue – Use of Speakerphone and Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

> *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*
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> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

This hearing began at 11:00 a.m. and ended at 1:24 p.m. The hearing was lengthened by the fact that the landlord was disruptive and had to be repeatedly cautioned.

At the outset of the hearing, I asked the landlord to remove his telephone from speakerphone. I informed him that I was not able to hear properly because the speakerphone was causing echoing and feedback on the line and if I was unable to hear properly, I could not conduct the hearing properly. The landlord removed his telephone from speakerphone. Twice during the hearing, the landlord unexpectedly disconnected from the teleconference and called back immediately both times, citing technical difficulties with his telephone. During the landlord's absence, I did not discuss any evidence with the tenants and I informed him of this during the hearing.

Throughout the conference, the landlord interrupted me and argued with me. He also repeatedly interrupted the tenant during his testimony, making rude comments and arguing with the tenant. I notified him that as the Arbitrator, my role was to conduct the conference and obtain testimony from both parties so that I was able to make a final,

binding decision. I notified him that only one party could speak at a time and that both parties would be given a chance to speak, present their case and respond to the other party's case.

I cautioned the landlord multiple times to stop interrupting me and the tenant. I repeatedly cautioned him that I would disconnect him from the hearing if he did not stop his interruptions. The landlord continued with his disruptive, rude and inappropriate behaviour. However, I allowed the landlord to attend the full hearing, despite his disruptive and inappropriate behaviour, in order to provide him with a full opportunity to present the landlord's application and respond to the tenant's case.

I caution the landlord not to engage in the same rude, inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and the witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on August 14, 2017. A written tenancy agreement was not signed, as the tenant was assigned a designated caretaker suite in the rental building based on his employment contract as a caretaker of the rental building. The female tenant is not a party to the employment contract but lives in the rental unit with her husband, the tenant, with the landlord's knowledge and permission. Monthly rent in the amount of $1,000.00 is payable on the first day of each month. This amount was deducted from the tenant's monthly employment salary until March 1, 2018, when he began paying it separately to the landlord, following the termination of his employment by the landlord on February 9,

2018. A security deposit was not paid for this tenancy. The two tenants continue to reside in the rental unit.

The landlord indicated the following reason on the 1 Month Notice that was issued to the tenant:

- *Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.*

The landlord stated that he was aware this hearing was not to obtain an order of possession based on the 1 Month Notice, but rather an early end to tenancy for an urgent reason under section 56 of the *Act*.

The landlord testified that the tenant engaged in illegal activity by hacking the landlord company's emails and breaching the personal information of its users. He stated that the tenant was not charged with or convicted of any crimes but he had two police file numbers for police incidents relating to the tenant, except he did not obtain the police reports. He said that the tenant was previously charged by the provincial law society with forgery, that the tenant sent a number of emails attacking the landlord company, its foundation and landlord PB, and that the police had talked to the tenant.

The landlord explained that the tenant refused to return three of four master keys for the landlord's 32 rental buildings and that the landlord had to replace the locks and keys for all of the units in each building at great expense. He said that because the tenant still has the master keys, he can still override the new key system in the buildings. He maintained that this was a major security threat to the landlord company.

Witness TR testified that he was an independent contractor and the resident handyman for the landlord company. He stated that the tenant only returned one of four master keys and while he did not personally see this return, he knew the tenant still had the other three master keys in his possession.

Landlord PB testified that she was stressed because the tenant attacked her through emails to the landlord personally, to the landlord company and to the landlord foundation. She stated that she has not had contact with the tenant since February 9, 2018, when his employment was terminated. She said that she called the police and they talked to the tenant about criminal harassment, forgery and stealing, but the police

had not laid any criminal charges against the tenant. She claimed that the police were waiting for this hearing to determine whether they might charge the tenant with criminal harassment.

Witness CM testified that she had two uncomfortable interactions with the tenant. On January 16, 2018, she said that she spoke with the tenant, he told her he was watching her on security footage, and he and tenant CR liked her blue hair colour. She stated that although she wanted to object, she allowed the tenant to take a photograph of her outside her decorated Christmas door because the tenant told her that he had evicted other people in the rental building and she was afraid of repercussions if she did not agree. She claimed that on March 16, 2018, the tenant approached her after she said "hi" first. She said that the tenant told her that landlord PB was "crazy" because she lied to other tenants, she added extra security cameras to spy, she was harassing people, and she was homophobic. She explained that the tenant claimed to have different versions of emails, since he had access to the caretaker emails. Witness CM maintained that landlord PB assured her that all of the locks had been changed, that she was safe, and the tenant would not harm her.

The tenant denied the landlord's claims, stating that the landlord exaggerated his case. The tenant told witness CM during the hearing, that he did not intend to make her uncomfortable, he liked her blue hair, and he wanted to take a photograph to show the female tenant because witness CM had Christmas decorations on her door. He said that he did not hack the landlord company's emails. He stated that, regarding the provincial law society proceeding, he did not represent himself as a lawyer despite their request to recruit him, but he worked as a paralegal in six provinces. Both the tenant and the female tenant testified that they returned all of the landlord's master keys for the rental buildings to the landlord's caretaker, the landlord's landscaper and the police. The tenant said that the landlord plumber's van was broken into and people may have stolen keys from the van.

Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

> *(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:*
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> *(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
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> *(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
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> *(iii) put the landlord's property at significant risk;*
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> *(iv) engaged in illegal activity that*
>
> *(A) has caused or is likely to cause damage to the landlord's property,*
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> *(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*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for its 1 Month Notice to take effect on March 31, 2018, just ten days after this hearing date on March 21, 2018.

During the hearing, the landlord stated that section 56(2)(a)(v) of the *Act* did not apply because the tenant did not cause any extraordinary damage to the residential property.

Regarding illegal activity, the landlord confirmed that the tenant was not charged with or convicted of any crimes. The landlord did not produce any police reports for this hearing, simply referencing police file numbers, which I am unable to access. Although there was reference to a provincial law society proceeding against the tenant for forgery, it was prior to this hearing and unrelated to this tenancy.

Regarding the remaining claims, landlord PB confirmed that the police had not charged the tenant with any crimes relating to her because they were waiting for the outcome of this hearing to determine whether they should. Witness CM testified that she did not file

any police charges against the tenant and that she did not feel threatened by or fearful of the tenant, she was simply uncomfortable during two interactions. She confirmed that landlord PB assured her that the tenant was not a threat.

The landlord changed and rekeyed the locks in the affected rental buildings. Although the landlord claimed that the tenant has the master key override for all of the buildings, he did not show how the tenant used this override in order to harm the landlord to the standard under section 56 of the *Act*.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenant.

Conclusion

The landlord's entire application is dismissed 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: March 22, 2018

Residential Tenancy Branch