



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VICTORIA COOL AID SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This decision pertains to the landlord's application for dispute resolution made on October 16, 2018, under the *Residential Tenancy Act* (the "Act"). The landlord seeks the following relief, pursuant to section 56 of the Act:

1. an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the Act ("order for early termination of tenancy"); and,
2. an order of possession in respect of the rental unit.

Two agents for the landlord and two advocates for the tenant, and the tenant, attended the hearing before me and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The landlord's agent ("K.O.") testified that he served the Notice of Dispute Resolution Proceeding package on the tenant, in person, on or about October 18, 2018. I find that, based on the testimony of the landlord's agent, that the tenant was served with the Notice of Dispute Resolution Proceeding package pursuant to, and in compliance with, section 89(2)(a) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application are considered in my decision.

Issues

1. Is the landlord entitled to an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the Act?

2. If yes, is the landlord entitled to an order of possession in respect of the rental unit?

Background and Evidence

The landlord's agent testified that the tenancy commenced on August 1, 2018, though the tenant did not take possession of the rental unit August 30, 2018. A copy of the written tenancy agreement was submitted into evidence.

On August 31, 2018, less than 24 hours after taking possession of the rental unit, the tenant got into a dispute with a staff member, and threatened that he would return with a gun. The staff member, fearing for his safety, called the police who attended.

On October 16, 2018, one of the landlord's staff went to speak with the tenant about an issue involving the tenant bringing unwanted guests into the rental unit. It was at this point that the staff observed the tenant in possession of a hatchet. The landlord testified that it is both a policy and a term of the tenancy agreement that weapons are prohibited. The tenant told the staff that he would come back and cut the staff member up.

The next day, October 17, after the tenant got into a confrontation with a staff member, the tenant threatened to return to the building with a gun and shoot people. Tenants have told the landlord that they are not feeling safe with the tenant residing in the building. While the landlord attempted to have a conversation with the tenant and the staff member in an effort to resolve the issue, the tenant offered little assistance, "threw up his hands" saying it was not his problem, and the meeting ended without resolution.

Copies of the landlord's event logs in relation to these three incidents were presented and submitted into evidence. A relevant excerpt from one log reads as follows:

[. . .] staff received a call from [third party tenant] that the new tenant, [the tenant] had threatened her and the rest of [building name] that he was coming back with a gun. She called police immediately.

An excerpt from a second log reads as follows (reproduced as written):

[. . .] While talking to [tenant] about this I noticed a hatchet by his door. I mentioned it is [landlord's] policy he cannot have a weapon open in his room. (By the door). He stated that "since I am being kicked out I'll do what the fuck I want

now.” As I was leaving his room he yelled at me “ if you come talk to me again I will fucking cut you” he repeated I will call you. I called 911.”

An excerpt from a third log reads as follows (reproduced as written):

After [tenant] left the building yesterday when the police left after the first incident regarding threats to cut me with a Hachette, he then came back into [the building] and open the office door in an aggressive manner and said “ you call the fucking cops on me ? Now I will show you what I can do” and went up to his room.

The tenant’s advocates, while acknowledging that the tenant’s behaviors are not acceptable or appropriate, submitted that the tenant has had severe health issues including PTSD symptoms and that the tenant had suffered a rather traumatising incident in the rental unit.

Further, the advocates proposed entering into a “last chance agreement” with the landlord, whereby the tenant could continue to reside in the rental unit on the condition that if there were to be one more incident that he would have to vacate immediately. The tenant has made significant improvements and having stable housing will go a long way in helping the tenant in continuing to make improvements.

In response, the landlord expressed empathy and understanding of the tenant’s situation but noted that they had previously tried to work with the tenant to resolve the issues, to no avail. They submitted that, while they appreciate the tenant has issues he is working through, the landlord has twenty other residents whose safety they must ensure. The agents stated that, while they might have considered working on a solution with the tenant’s advocates if the advocates had contacted them earlier, it was simply too late to consider any such “last chance agreement.”

One of the advocates commented that, while she had the tenant’s eviction notice and was aware of the matter since October 18, she did not make any steps to directly contact or work with the landlord on resolving the issue.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending 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 (b) granting the landlord an order of possession in respect of the rental unit.

For me to grant an order under section 56(1), I must be satisfied of the following:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following: [. . .]
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; [. . .] 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.

In this case, the tenant has, I find, unequivocally seriously jeopardized the health and safety of other occupants and the landlord's employees. While I am not unsympathetic to the tenant's situation and his need for stable housing, threatening to cut up another occupant or employee, threatening to bring a gun into the building and shoot his neighbours, and having possession of a prohibited weapon, are actions that seriously jeopardize the health and safety of the other occupants and the landlord.

The landlord's agents provided oral and documentary evidence establishing this, and the tenant's advocates did not dispute the landlord's evidence in this regard, acknowledging that these behaviors "are not appropriate."

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

As such, pursuant to section 56(1)(a) of the Act, I order that the tenancy is ended two days from the date on which the order of possession is served on the tenant. I also grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service.

Conclusion

I hereby order that the tenancy is ended two (2) days from the date on which the order of possession is served on the tenant.

I hereby grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service upon the tenant.

This decision is final and binding, unless otherwise permitted under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 16, 2018

Residential Tenancy Branch