Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the "*Act*") for an Order of Possession to end the tenancy early pursuant to Section 56 of the *Act*, and for the recovery of the filing fee paid for this application.

The Landlord and legal counsel for Landlord (collectively the "Landlord") attended the teleconference hearing, as did the Tenant and two advocates (collectively the "Tenant"). The Tenant's advocate, P.O. did not participate in the hearing. The Landlord also had three witnesses join the hearing to present testimony.

The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package as well as a copy of the Landlord's evidence. However, the Tenant stated that she did not review the Landlord's evidence as it was received late on January 29, 2019. The Landlord confirmed receipt of the Tenant's evidence package.

As stated in rule 3.14 of the *Residential Tenancy Branch Rules of Procedure,* evidence from the applicant must be received by the Residential Tenancy Branch and the respondent not less than 14 days prior to the hearing. As such, I find that the Landlord's evidence was served to the Tenant within 14 days as required and will therefore be accepted. The Landlord did not bring up any issues regarding the Tenant's service of evidence and therefore the evidence of both parties will be considered in this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

At the outset of the hearing, the Tenant requested an adjournment to provide more time to prepare her response to the Landlord as well as to have legal counsel representation. The Tenant also noted that she requires additional time to process information due to a traumatic brain injury. The Landlord and legal counsel for the Landlord were provided with time to respond and stated their disagreement to the adjournment request.

I declined to grant the adjournment request and the parties were notified that the hearing would continue as scheduled. The criteria listed under rule 7.9 of the *Rules of Procedure* were considered, and it was determined that both parties had time to prepare for the hearing, submit evidence and attend the hearing. The Tenant submitted approximately 60 pages of documentary evidence and attended the hearing with two advocates, which would indicate that she had a chance to prepare and was able to proceed at the scheduled hearing. This was an urgent application filed by the Landlord under Section 56 of the *Act* and it was determined that proceeding as scheduled would not unfairly prejudice either party. Both parties submitted evidence within the required timeframes and attended the hearing with representation.

The teleconference hearing was scheduled for one hour. The parties were granted additional time for the hearing and the hearing took place over the period of one and a half hours. Upon reaching the one-and-a-half-hour timeframe, I advised the parties that I had sufficient testimony and evidence to make a decision on this matter. However, as it seemed that the parties had further testimony and evidence to present, the Landlord was provided with the option of adjourning the hearing to be reconvened at a later date. The Landlord and legal counsel exited the hearing to discuss and advised that they would like the matter resolved based on the evidence and testimony submitted. As such, in accordance with rule 8.1 of the *Rules of Procedure,* the parties were informed that the hearing would be ending.

Issues to be Decided

Is the Landlord entitled to an Order of Possession to end the tenancy early pursuant to Section 56 of the *Act?*

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have reviewed and considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The written submissions of the parties state that the tenancy began in 2002. The tenancy agreement was included as evidence but is difficult to read the details. The Landlord filed an Application for Dispute Resolution on January 18, 2019 for an Order of Possession to end the tenancy early under Section 56 of the *Act.*

The Landlord testified that there have been ongoing issues with the Tenant over the years. They stated that on September 19, 2018 they received a phone call from the property manager stating that she had been physically assaulted by the Tenant. The Landlord submitted the police report information from the incident. Although the identifying information was redacted, the report regarding the incident on September 19, 2018 states in part the following:

> *Both parties are claiming that (redacted) however it seems more likely that it was a consensual disagreement.*

The Landlord stated that they also received a voicemail from the Tenant stating that she was attacked by the property manager and that the police would be called. The Landlord stated that when the police arrived, the Tenant would not let them into the rental unit. The Landlord submitted that when their property manager attempted to call the police, the Tenant took her phone.

While the Landlord submitted that the incident on September 19, 2018 was the first physical confrontation with the property manager, they stated that there have been many other incidents that have caused concern. The Landlord stated that they have received multiple threatening and intimidating voicemails from the Tenant, including some where the Tenant threatens suicide. Included in the police report information

submitted by the Landlord was a report from September 20, 2018 in which the Landlord had called the police to check on the Tenant after she threatened suicide on a voicemail to the Landlord.

The Landlord submitted four recordings of voicemails into evidence and stated that these voicemails are intimidating and upsetting. The Landlord also stated that they have received dozens of letters, emails and notes from the Tenant accusing the Landlord of being a liar and other unfounded accusations. The Landlord stated that this bullying has been going on for a long time.

The Landlord stated that they did not apply until January 2019 as they knew they would need evidence, so they waited for the police reports which they did not receive until December 24, 2018. The Landlord stated that as they were not present on September 19, 2018 when the property manager was assaulted, they knew they would need evidence as to what occurred.

The Landlord submitted multiple letters, notes and email communication from the Tenant, the majority from 2017 and 2018. They also included written submissions outlining the events that have occurred that led to their application for an Order of Possession, including the ongoing issues with the Tenant and the Landlord as well as with the other residents. The written submissions note concern regarding the Tenant's written and verbal communication with the Landlord, including accusations to the Landlord and suicide threats. The submissions from the Landlord state their belief that the tenancy needs to end.

The Landlord provided testimony that they have also received complaints from other tenants in the building. They submitted a letter dated February 17, 2017 from another resident in the building which notes recurring abuse from the Tenant. A second letter dated September 19, 2018 from two residents in the building states that they saw the property manager visibly shaken after the incident with the Tenant on this date and that they found the property manager's phone on the property manager's car. They stated that following the incident, the Tenant had left an abusive and threatening voicemail for the property manager which they listened to.

Included in the Landlord's evidence were emails dated April 22, 2018 and May 4, 2018 in which another resident in the building notes concerns with excessive noise caused by the Tenant.

The Landlord stated that the Tenant has refused entry to her rental unit while the Landlord was trying to deal with heating issues in the building. They noted that she would stack her furniture up against the door and not allow them to enter.

The first witnesses of the Landlord, R.R. and L.P. stated that they have not had any issues with the property manager. They testified that they did not witness the event on September 19, 2018 but saw the property manager afterwards and stated that she was visibly shaken and upset. They submitted a written witness statement to this regard as well. The witnesses stated that the property manager told them that she was pushed, and the Tenant took her phone. One of the witnesses found the phone on the property manager's car and gave it back to her. The witnesses also spoke about other issues that have occurred with the Tenant over the years that have caused disturbances to others.

The third witness for the Landlord, Z.C. is the property manager. She stated that on September 19, 2018 she was pushed by the Tenant and her phone was taken. She noted how upsetting and scary this was. She stated that while this was the only physical altercation that has occurred with the Tenant, there have been many instances of verbal and written harassment in person and through email and voicemail. The witness stated that the Tenant has threatened her in the past but had not assaulted her physically until September 19, 2018.

The Landlord stated that they are concerned for the safety of the property manager and noted that they have been paying someone to come to work with her. They also stated concern for the other residents and also the safety of the building and residential property.

The Tenant stated that the Landlord has been trying to evict her for many years. The Tenant stated that the property manager has called her inappropriate and insulting names and that on September 19, 2018, after being called names the Tenant approached the property manager but did not push or touch her.

The Tenant stated that she spoke to a nurse who believes that the Tenant was assaulted. The Tenant submitted the notes from a meeting with the nurse on September 19, 2018. The notes state that the Tenant advised them that she was assaulted by the property manager on this day. The Tenant testified that it was her who called the police on September 19, 2018.

The Tenant also testified as to an incident when the property manager kicked in her door and stated that the door is now damaged, which she submitted photos of. The Tenant stated that she did not refuse entry to her rental unit but did not open the door as she was terrified after the door was being kicked in for over an hour.

The Tenant noted that she has a traumatic brain injury and submitted many pages of documentary evidence regarding her medical information. She noted that in 2014 she sent a note to the property manager to ask for written communication only. The Tenant stated that she engages in behaviour for self-protection due to her brain injury and stated that people often view this negatively, such as when she did not open the door due to the aggressive nature in which it was being kicked.

The Tenant submitted 60 pages of documentary evidence, which included in part written submissions, medical information, photos, a previous dispute resolution decision, and past communication with the Landlord.

Analysis

The Landlord's written submissions state that they filed their application pursuant to Sections 56(2)(a)(i) and 56(2)(a)(ii) of the *Act* which state the following:

> (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
>
> (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

Section 56(2)(b) states the following requirement in considering whether a tenancy should end under Section 56 of the *Act:*

> (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.

As stated by rule 6.6 of the *Rules of Procedure,* the burden of proof is on the party making the claim. Therefore, in this matter the onus is on the Landlord to prove, on a balance of probabilities, not only that the actions or behaviour of the Tenant pose an immediate or serious risk, but that the matter is urgent in that it would be unreasonable or unfair to wait for a One Month Notice to End Tenancy for Cause (the "One Month Notice") to take effect, and instead that the tenancy should end immediately.

The Landlord provided testimony and evidence regarding historical and ongoing conflict with the Tenant, as well as more recent events that occurred in September 2018. This included an incident on September 19, 2018 in which the property manager stated that she was pushed by the Tenant and that there were upsetting voicemails left by the Tenant following the incident.

The Landlord testified that they waited until January 2019 to apply for dispute resolution due to needing the police reports as evidence, which they stated they received on December 24, 2018. They filed the Application for Dispute Resolution on January 18, 2019.

The testimony and evidence of both parties establishes that there was a serious conflict that occurred on September 19, 2018 as well as ongoing conflict between the parties. Although the parties are not in agreement as to the exact events that occurred, I am not satisfied that it would have been unreasonable for the Landlord to wait for a One Month Notice to take effect. Had a One Month Notice been served to the Tenant following the incident in September 2018, the effective date of the One Month Notice would have been at the end of October 2018. With service of a One Month Notice, the Tenant would have also been provided with the opportunity to dispute the notice under Section 47(4) of the *Act* had she not agreed with the reasons for the notice.

The Landlord applied for dispute resolution on January 18, 2019. Although it seems clear that there is conflict in the relationship between the parties and that the relationship has deteriorated to a point where the parties are no longer able to communicate peacefully, I do not find that the Landlord provided sufficient testimony and evidence to determine that urgent nature of the conflict that was not able to wait for a One Month Notice, particularly given that the application was filed four months after they stated a serious incident occurred.

As such, despite disturbances that may have been caused by the Tenant, I am not satisfied that the Landlord has established that Section 56 of the *Act* applies.

Applications under Section 56 are not meant to bypass the process for ending a tenancy with a One Month Notice. Instead, an application under Section 56 is reserved for urgent matters that pose an immediate risk to other occupants, the landlord or the property and for which waiting one month would be unreasonable. As such, I do not find that the Landlord met the burden of proof for me to be satisfied that this is an urgent matter for which a One Month Notice could not have been issued and therefore find that the requirements to end a tenancy under Section 56 of the *Act* have not been met.

Accordingly, I dismiss the Landlord's application, without leave to reapply. As the Landlord was not successful with their application, I decline to award the recovery of the filing fee.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply. This tenancy continues until ended in accordance with the *Act.*

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 14, 2019

Residential Tenancy Branch