



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FANGZHOUHOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 15, 2019 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

The Representative appeared at the hearing for the Landlord. The Translator appeared with the Representative to assist given a language barrier. The Representative called two witnesses during the hearing. The witnesses were only present when required during the hearing. The Tenant appeared at the hearing. I explained the hearing process to the parties and answered their questions in this regard. The parties and witnesses provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not. I addressed service of the hearing package and Landlord’s evidence.

The Tenant confirmed he received the hearing package and evidence. The Tenant had not viewed the video served on him as he took issue with the device it was provided on.

The Representative advised that she had not confirmed with the Tenant that he was able to see/hear the evidence on the digital device served as stated on the Digital Evidence Details form.

I told the parties I was not satisfied the Landlord complied with the Rules of Procedure (the “Rules”) in relation to the digital evidence and heard the parties on whether the video evidence should be admitted or excluded.

Rule 3.10.5 of the Rules states as follows:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties...

Before the hearing, a party providing digital evidence to other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

...

If a party...is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

...

The Landlord did not confirm with the Tenant that he was able to access the video and therefore did not comply with rule 3.10.5 of the Rules. The Tenant did not access the video. I find it would be unfair to the Tenant to admit the video when he did not access it and the Landlord failed to comply with the Rules in relation to digital evidence. The video is excluded and I will not consider it.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Landlord be granted an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

Both parties agreed there is a verbal tenancy agreement between the Landlord and Tenant in relation to the rental unit.

The Tenant testified that the tenancy started in the third week of November. The Representative testified that this was a different agreement that ended and that the second tenancy agreement started in January of 2019.

The Tenant testified that the tenancy is a month-to-month tenancy. The Representative agreed with this but also testified that the tenancy ended April 02, 2019.

The parties agreed rent is \$1,000.00 per month. The parties did not agree on when rent is due.

The Tenant testified that he did not pay a security deposit and mentioned this was a hotel. Both parties agreed the rental unit is the Tenant's residence and that he does not stay there for vacation or travel purposes.

I understand from the parties and evidence that the Tenant shares common areas with a second tenant and her two children.

The Representative relied on section 56(2)(a)(i) and (ii) as the basis for the Application. The Representative testified as follows.

The Tenant is dangerous and poses a risk to her and other tenants. The Tenant has been verbally abusive and aggressive towards her. The Tenant yells, shouts and swears at her. The Tenant makes discriminatory remarks to her. The Tenant has threatened her.

On March 13th, she came to collect rent from the Tenant and he lost his temper and was yelling at her. She had to call 911. Police attended. She felt physically threatened by the Tenant. She now must have police attend to meet with the Tenant. The Tenant sent her a message after the March 13th incident about fabricating information to harm the Landlords.

An incident occurred between the Tenant and child of the upstairs tenant. The Tenant twisted the arm of the child and was verbally abusive towards the upstairs tenant. He swore at the upstairs tenant and made discriminatory remarks to her.

The Representative testified that this is an urgent situation because the Tenant is dangerous and living with the upstairs tenant who is a single mother with two children.

The witness D.C. testified as follows.

He was present February 8th and March 13th for discussions between the Tenant and Representative. During the discussions, the Tenant would not listen to the Representative. He was shouting. On March 13th, the Tenant was completely uncooperative, threatening and verbally abusive. He was swearing, making disparaging comments and making wild accusations. The Representative got upset and called 911. The Tenant came out of the rental unit with a hockey stick and caused the Representative concern for her safety. Police attended and spoke to the Representative and the Tenant. He made notes of the incident at the time which have been submitted as evidence.

The Tenant was given an opportunity to ask D.C. questions. The Tenant suggested that D.C. was not telling the truth and D.C. confirmed he was.

The witness R.Y. testified as follows.

On March 22nd, the Tenant came upstairs and was trying to touch her four-month-old baby. Her six-year-old child told him not to and he grabbed the child's arm and twisted it back. She went upstairs and asked the Tenant why he did that. The Tenant got really mad. The Tenant swore at her. She went into her room and closed the door. She called the Representative. The Tenant was in the washroom shouting. The Tenant then came out and made discriminatory remarks to her. She called the police.

In response to a question from the Tenant, R.Y. testified that she saw the Tenant assault her child. The Tenant asked R.Y. if she really fears him and she said she does a little because she is not sure what will happen next.

The Landlord submitted a text from the Tenant which includes discriminatory comments.

The Tenant disputed the testimony of the Representative and witnesses. He testified that the allegations are not true and the alleged incidents did not happen. He acknowledged that the police attended in relation to the incident with the upstairs tenant's child. He disputed the authenticity of the evidence submitted. I did not find the remainder of the submissions of the Tenant to be relevant to the issues before me.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early where two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

I accept the Representative's testimony that the Tenant has been verbally abusive and threatening towards her and makes discriminatory remarks to her as this is supported by the evidence and testimony of witness D.C. There was nothing about the testimony of the Representative or witness D.C. that caused me to question their reliability or

credibility. I accept that the events of March 13th occurred as described by the Representative and witness D.C.

The allegation that the Tenant has made disparaging and discriminatory comments towards the Representative is supported by the text message submitted.

I do not find the Tenant's denial of the allegations reliable or credible given that both the Representative and witness D.C. provided similar accounts of the Tenant's behaviour. The Tenant has not submitted any evidence in support of his position. I acknowledge that it is the Landlord who has the onus to prove the claim; however, I find the Landlord has done so through the testimony of the Representative and witness D.C. and the evidence submitted.

Based on the above findings, I accept that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I also accept that this is an urgent situation given it involves abusive and threatening behaviour which has resulted in the police attending the residence twice.

The Landlord has met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit which will be effective two days after service on the Tenant.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Landlord is issued a Monetary Order for this amount.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$100.00. The Landlord is issued a Monetary Order in this amount. This Order must be served on the

Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 16, 2019

Residential Tenancy Branch