



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST UNITED CHURCH SOCIAL HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

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 Termination of Tenancy and Order for Possession due to the tenant posing an immediate and severe risk to the rental property pursuant to section 56 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The housing society agent M.C. attended the hearing at the date and time scheduled for this hearing, and is herein referred to as "the landlord". The tenant joined the hearing approximately 12 minutes late. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding Package and evidence posted to the tenant's door on June 25, 2019. The tenant confirmed that he did not submit any evidence in relation to this matter. Based on the undisputed testimonies of the parties, I find that the tenant was served with the documents for this hearing in accordance with section 89(2) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties confirmed that there was no written tenancy agreement, only a verbal tenancy agreement. The parties confirmed their understanding of the following terms of the tenancy agreement:

- This month-to-month tenancy began in 2018, either February 1 or March 1 – the parties were in dispute regarding the month and neither submitted any documentary evidence to support their position.
- Current monthly rent of \$1,005.00 is payable on the first day of the month.
- The tenant paid a security deposit of \$502.50 at the beginning of the tenancy, which continues to be held by the landlord.

The tenant explained that it was his position that there was a rent subsidy pertaining to his rental agreement, however he did not submit any information pertaining to that claim for this hearing.

The landlord testified that the tenant has been served with a 10 Day Notice to End Tenancy for Unpaid Rent and a One Month Notice to End Tenancy for Cause. The landlord submitted a copy of the 10 Day Notice dated June 12, 2019 into documentary evidence.

I note that the parties confirmed that there is another hearing between the parties scheduled in the near future (file number noted on the cover sheet of this decision) to address the tenant's dispute pertaining to the 10 Day Notice to End Tenancy for Unpaid Rent.

Given that a future hearing has been scheduled between the parties, I provided the parties an opportunity to enter into settlement negotiations to resolve the current dispute and future dispute at this hearing. However, the parties were unable to come to a settlement of their dispute and therefore the hearing proceeded as an arbitration matter with both parties providing their testimony.

The landlord testified that the tenant had been involved in a “violent encounter” with another resident and as a result, the tenant is considered “violent and dangerous” by the employees of the housing society landlord and residents of the building.

The landlord testified that the resident who was attacked suffered “severe injuries” and now “fears for his life”. The landlord confirmed that the alleged victim of the attack resides in a separate rental property located adjacent to the rental property in which the rental unit which is the subject of this dispute is located. The landlord confirmed that the adjacent rental building is operated by the same housing society but has its own fob-access security system. The landlord testified that the tenant has been barred from the building in which the alleged victim resides, but has been caught entering the building on two occasions.

The tenant confirmed that he was involved in an altercation with a resident of the adjacent building, but testified that the altercation was “in a sense, self-defence”. The tenant confirmed that he has a court order barring him from the adjacent rental property and testified that he has not entered that property in accordance with the court-ordered restrictions.

The landlord submitted into documentary evidence an undated, unsigned written statement which appeared to be from a security guard working for the housing society. The statement pertained to an incident that took place on April 26, 2019 involving the tenant being seen entering the adjacent rental property, yelling being heard, and then the tenant witnessed leaving the building on the security camera video.

The landlord testified that they had not contacted police to report the tenant’s alleged breach of court conditions on two occasions entering the adjacent rental property building.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord’s notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property,*

and

it would be unreasonable, or unfair to the landlord, the tenant 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 outlined above, there are clearly two separate components to section 56 of the *Act*, both of which need to be met in order for a landlord to obtain an early end to a tenancy. The second component requires that a landlord demonstrate that it would be unreasonable or unfair to wait for consideration of a standard One Month Notice to End Tenancy for Cause to be considered.

In this case, the landlord indicated that they have issued notices to end tenancy to the tenant, including a 10 Day Notice to End Tenancy for Unpaid Rent and a One Month Notice to End Tenancy for Cause.

In any event, the only matter before me at this hearing was the landlord's application for an early end to tenancy, resting primarily on an incident in which the tenant was involved in a physical altercation with a resident of an adjacent rental property.

Section 56 of the *Act* is reserved for situations where a tenant's actions have escalated to the extent that the delay involved in issuing a One Month Notice for Cause and waiting for that Notice to take effect would be unreasonable or unfair.

In this case, although the landlord provided verbal testimony that the employees and residents of the rental property consider the tenant "violent and dangerous", the only

evidence submitted by the landlord was a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and a statement by a security guard regarding the tenant entering and exiting the adjacent rental property, from which he is barred. The landlord did not provide any copies of police reports regarding police attendance at the rental property in question, or incidents involving staff or residents at the rental property in question.

The tenant disputed the landlord's testimony denying that he has accessed the adjacent rental property and referenced self-defence in relation to the physical altercation with the resident of the adjacent building.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further sufficient evidence, the party with the burden of proof has not met the onus to prove their version of events.

In order to end this tenancy early without the issuance of a One Month Notice for Cause, I find that the landlord would require more evidence to support the grounds for urgency in this matter as the landlord failed to provide any police reports or witness testimony that the tenant poses a risk to staff or residents in the building in which the tenant resides and has access. Given that the tenant has a court-imposed restriction preventing him from entering the adjacent rental property where the alleged victim resides, I find it reasonable to expect that the landlord would have reported any breach of the court restriction if the perceived threat posed by the tenant was of an urgent concern.

In summary, although there *may* be cause to end this tenancy pursuant to section 47 of the *Act*, I am not satisfied that the landlord has sufficiently met the burden of proving that it would be unreasonable or unfair to wait for a One Month Notice to End Tenancy to take effect, as is required in order to end a tenancy early pursuant to section 56 of the *Act*.

Therefore, I dismiss the landlord's application for an early end to tenancy. This tenancy continues until ended in accordance with the *Act*. As the landlord was unsuccessful in their application, they must bear the cost of the application filing fee.

Conclusion

I dismiss the landlord's application for an early end to tenancy and recovery of the application filing fee. 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: July 10, 2019

Residential Tenancy Branch