



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

The tenant did not attend this hearing, although I left the teleconference hearing connection open for the duration of the hearing in order to enable the tenant to call into this teleconference hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing.

The landlord testified that the tenant was served the notice of dispute resolution form and supporting evidence package by posting it on the door of the rental unit on August 28, 2019, one day after receiving the notice of dispute resolution form from the Residential Tenancy Branch. I find that the tenant was deemed served with this package on September 2, 2019, three days after the landlord posted it, in accordance with sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) an order an early end to tenancy and possession; and

2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The parties entered into a written tenancy agreement starting date. Monthly rent is \$1,200.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$600.00.

The rental unit is a three-story single-detached home. The tenant lives on the top floor. Tenant DT ("**DT**") occupies the main floor and tenant CS ("**CS**") occupies the basement.

The landlord testified that there have been ongoing and escalating issues with the tenant and DT and CS over the past 18 months (including an incident in February 2019 where the tenant threw a piece of cement through DT's car window. She testified that the tenant's behavior has become increasingly erratic and confrontational over the ensuing months.

The landlord testified such behavior came to a climax during the week of July 27 to August 2, 2019. She testified that the tenant made violent, anti-Semitic remarks directed towards DT, CS, and DT's girlfriend ("**SN**") that included death threats and the miming of shooting a gun at them, and that the police were called to the rental unit on two separate occasions. The latter of these occasions resulted in a seven-hour standoff with police during which time the rental unit and two adjacent properties had to be evacuated.

The landlord testified that the tenant was arrested and then released on bail. A condition of his bail was that he not attend any known residence, place of employment or place of education of DT, CS, or DT's girlfriend ("**SN**"), except that he may attend the rental unit on one occasion to collect personal belonging if accompanied by police. A copy of the bail conditions was entered into evidence by the landlord.

CS attended hearing and testified as to the specific chronology of event between July 27 and August 2, 2019. CS also entered into evidence a sworn statement, which she read portions of during her testimony.

CS that while she was sitting with DT and SN on one occasion on July 27 or 28, the tenant exhibited aggressive behavior toward them (SN in particular) called them all liars, and "went off about various conspiracy theories".

CS testified that on the evening of July 30, the tenant yelled at her and DT and ranted the Nazi's and "how the Nazi's should be given more credit and that they executed a masterful plan and went on to say that they swiftly and succinctly exterminated the Jews and that that's what he wanted to do to [DT] and [CS]."

CS testified that on July 31, the tenant's friend came over to the rental unit, and the tenant refused to see him and accused him of intruding. The tenant then exited the rental unit (on the top floor of the rental property) and jumped onto the roof of a neighboring house. The occupant of the house then called 911, as did the tenant. The police attended the rental property, and the tenant remained on the roof for 5 hours.

The landlord submitted a witness statement of the neighbor largely corroborating CS's testimony.

CS testified that on August 2, 2019, the tenant went down to the basement (where CS resides) in the morning and ranted about wanting to exterminate DT and CS. She testified he then ranted about child rape, pedophilia, and child abuse. She testified that at some later point during the day, the tenant started yelling at DT, CS, and SN while the three of them were in the yard. CS wrote:

[The tenant] had closed his door so we thought it was OK to talk. [He] then opened the door and demanded that [SN] tell him his name. He then demanded that she stop asking him "what he's doing up there" and that we need to "get the fuck out" and that this was "his house". [SN] never asked him what he was doing "up there". [The tenant] then started yelling at us and uttering threats and then pretended to shoot us with a golf club. He kept yelling at us to get the fuck out. [DT] then called the police again.

Once the police arrived we spoke to police officer [omitted] who took down our statement and took us and the matter very seriously. She asked us directly if we felt safe and if we felt threats were made directly at us and we ([DT] and I) said very much yes. He threatened both of us. We (mostly me) reiterated what I heard him say: the Nazi's succinctly and swiftly exterminated

the jews and he would like to do the same to us. [The officer] then had enough information from us to proceed with police action. She then told us this could take a while. She asked us to stay inside and out of sight from [the tenant].

Police proceeded to try to make contact with [the tenant] and try to get him to come outside to talk to him. He refused for 7 hours. We tried to contact car 87 the mental health unit to help us but the service was not available that evening. We called the landlord and notified her of the events unfolding and told her that we had been threatened physically by [the tenant].

Suddenly we were evacuated from our homes. The neighbours on both sides of our house were also evacuated. Police were in the process of getting a warrant and told us they may have to go the route of shooting tear gas in his suite. They said this was a last resort. If he ended up on the roof this could also lengthen the situation because he could fall off of the roof.

This was a very long and scary night. I felt overwhelmed and scared for everyone involved. I was evacuated from my home leaving my young cat inside by herself and my doors unlocked. I felt like I had nowhere to go and I had to call a friend and ask if I could come stay there for a few hours or maybe the night. I suffer from complex PTSD myself and this was very retraumatizing in many ways for me.

CS confirmed in her testimony that the police ultimately shot tear gas into the rental unit, which drove the tenant onto the roof, where he remained until a fire truck attended, and he agreed to be taken down.

CS conclude her witness statement by writing:

I no longer feel completely safe in my home. I am jumpy and extremely hyper vigilant. I feel nervous in my basement which is another common area. [The tenant] is unpredictable, and paranoid, so I'm feeling uneasy until this matter is resolved or I know he is getting help and has a safe place to be.

The landlord submitted several other witness statements (including those from DT and SN) which support CS's testimony. It is not necessary for me to recount them in this decision.

CS testified that, on August 10, 2019, the tenant attended the rental unit accompanied by a police officer to retrieve some of his personal effects from the rental unit. She testified that before the officer arrived, the tenant waited by his car two house down from the rental property and yelled so loudly that CS heard him from inside the rental property.

The landlord testified that she remains in contact with the tenant by email, and that he sends her “weird” messages. She also testified that he stated to her that he would move out of the rental unit by the end of September, but that she does not believe he will due so.

Analysis

Early Termination of Tenancy applications are governed by section 56(2) of the Act, which reads:

Application for order ending tenancy early

56(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;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(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

(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.

Rule of Procedure 6.6 sets out the standard by which I am apply when assessing whether to grant the relief sought in an application. It states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application.

As such, the landlord must satisfy me, on a balance of probabilities, that she has fulfilled the requires set out in section 56(2) of the Act.

After considering the evidence presented and the testimony of the landlord and of CS, I find that the landlord has discharged her evidentiary burden and demonstrated that an order for an early end to the tenancy is required.

I accept the uncontroverted evidence of CS and of the landlord. I found CS to be a credible witness, who spoke confidently and provided great detail about her dealings with the tenant.

I find that the tenant's repeated erratic behaviour, ranting, and death threats directed towards CS and DT amount to a both significant interference and an unreasonable disturbance. Likewise, I find that the conduct of the tenant which necessitated the police to attend the rental unit, evacuate CS, DT, and their neighbours, and fire tear gas into the rental unit amounts to an unreasonable disturbance.

As such, I find that the 56(2)(a) are met.

I also find that it would be significantly unfair to the occupants of the rental premises to wait for a notice to end the tenancy under section 47. Such a delay is not appropriate given the tenant's continued erratic conduct. While I have heard no evidence that the tenant has returned to the rental unit unaccompanied by the police following his arrest, I am not confident that he will persist in his absence. The landlord has established a pattern of extremely erratic behaviour by the tenant, and I find that, in light of this, there

is the potential for the tenant to return to the rental unit, in violation of the bail conditions. As such, I find that the landlord has satisfied the requirements of section 56(2)(b).

Pursuant to section 56, I order that:

- 1) the tenancy between the landlord and tenant is terminated effective of this date;
- 2) the landlord is entitled to an order of possession in respect of the rental unit, effective two days after she serves this decision and attached orders on the tenant.

Pursuant to section 71, I order that the landlord may serve this decision and attached order on the tenant via email.

As the landlord has been successful in her application, pursuant to section 72, I order that the tenant reimburse her the filing fee.

Conclusion

The landlord is entitled to the relief she seeks, including the reimbursement of her filing fee.

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: September 05, 2019

Residential Tenancy Branch