



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

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*.

The landlord's agents T.E., D.J. and S.S. attended on behalf of the corporate landlord at the date and time set for the hearing of this matter and are herein referred to as "the landlord". The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:57 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding for this hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that they had served the tenant with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent S.S. testified that he had served the tenant with the notice of this hearing and the landlord's evidence in a package that was posted on the tenant's rental unit door on October 4, 2019, and submitted into documentary evidence a Proof of Service form (#RTB-9) signed by a landlord's staff member who witnessed the service.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or ‘deemed’ received on the third day when it is served by posting on the door.

As such, I find that the tenant was served with the notice of this hearing in accordance with section 89 of the *Act* and deemed to have received the notice of this hearing on October 7, 2019, the third day after posting, in accordance with section 90 of the *Act*.

The landlord testified that the tenant was served with both documentary and digital evidence. The digital evidence, consisting of videos, was contained on a DVD disc included in the package that was posted to the tenant’s door with the Notice of Dispute Resolution Proceeding. The landlord completed and submitted a Digital Evidence Details form (#RTB-43) however the landlord acknowledged that they never confirmed with the tenant that she was able to access the digital evidence served on her. Further, I found that one of the files of the digital evidence submitted by the landlord to the Residential Tenancy Branch was not able to be viewed and produced the following error message:

“This file isn’t playable. That might be because the file type is unsupported, the file extension is incorrect, or the file is corrupt.”

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure sets out the requirements for a party to confirm access to digital evidence, as follows, in part:

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

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

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

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

[My emphasis added]

In accordance with Rule 3.10.5, given the fact the landlord failed to confirm that the tenant was able to access the digital evidence, and given the fact that I was unable to view at least one of the video digital files submitted by the landlord, which raises doubt that the tenant would have had success accessing all of the digital evidence, I find that the landlord's digital evidence will not be considered in this matter, only the documentary evidence served on the tenant and provided to the Residential Tenancy Branch has been considered.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession pursuant to section 56 of the *Act*?

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.

A written tenancy agreement was submitted into documentary evidence. The landlord confirmed the following terms of the tenancy:

- This tenancy began June 1, 2015 and is currently a month-to-month tenancy.
- Current monthly rent of \$375.00 is payable on the first day of the month.
- The tenant paid a security deposit of \$187.50 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord's Application for Dispute Resolution provided the following reasons for seeking early end to the tenancy pursuant to section 56 of the *Act*:

[Tenant] continues to post a serious hazard to the health and safety of neighboring tenants including escalating violence, threats, theft and property damage.

[Tenant] has had multiple interactions involving, violence with Staff and residents, theft and property damage. April 8th 2019 I served a 30 day eviction notice. After a conversationn with [the tenant's] mother I've tried to work with [the tenant]. [The tenant] has been concected with the [landlord's] Health and Safety Liaison, but [the tenant's] behaviour has become increasly worse. Most recent on Sept.5 2019 resulted in a two Police incident File# [file number] and [file number].

[Reproduced as written except for anonymization of information]

On the landlord's Application for Dispute Resolution, under the heading "APPLICANT INFORMATION ON REASONS FOR REQUESTING AN EXPEDITED HEARING" I note that the landlord has failed to provide any information or arguments on why this hearing required scheduling on an expedited basis.

The landlord provided unchallenged testimony regarding incidents involving the tenant as follows:

- April 2, 2019 the tenant threw a rock through a window on the rental property
- May 18, 2019 the tenant broke into another resident's room
- May 31, 2019 the tenant threatened a staff member with a baseball bat
- Several incidents involved the tenant breaking locks to gain access

The landlord testified that a One Month Notice to End Tenancy for Cause was served to the tenant in April 2019, however the landlord and tenant discussed the issues and it was decided by the landlord to cancel the notice. As the tenant's unacceptable behaviour continued, the landlord issued warning letters.

The landlord testified that on September 12, 2019 the tenant kicked in the door of another resident's rental unit and on September 16, 2019 threatened another female resident and kicked her down the stairs. Although the other residents involved reported the incidents to the landlord, they were not willing to cooperate with pursuing the matters through police. Subsequently the landlord served the tenant with another One Month Notice to End Tenancy for Cause on September 18, 2019 by posting it on the tenant's rental unit door.

In support of the landlord's testimony, the landlord submitted copies of the breach of tenancy and warning letters issued to the tenant, receipts for repairs to broken locks, staff log book entries, and copies of the two One Month Notices issued to the tenant.

The landlord confirmed that the tenant did not dispute the One Month Notice dated September 18, 2019. As such, as of October 1, 2019, the landlord was at liberty to apply for an Order of Possession on the basis of the One Month Notice which provided an effective vacancy date of October 31, 2019. Instead, on October 1, 2019, the landlord applied to end the tenancy early through this expedited hearing process pursuant to section 56 of the *Act*. When asked why the landlord chose to apply to end the tenancy early under section 56 *Act* instead of applying for an Order of Possession on the basis of the One Month Notice under section 55 of the *Act*, the landlord testified that the tenant's behaviour had escalated and become increasingly volatile and they could not wait for the One Month Notice to take effect. However, the landlord did not provide any testimony regarding any further incidents involving the tenant since September 16, 2019.

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 of the *Act*, I need to be satisfied that the tenant or their guest 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 take effect.

In this case, the landlord indicated that they have issued notices to end tenancy to the tenant, including a One Month Notice to End Tenancy for Cause dated September 18, 2019 which was undisputed by the tenant and for which the landlord could have proceeded with an application for an Order of Possession.

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 incidents involving the tenant breaking into another rental unit and engaging in a physical altercation with another resident of the rental property, which occurred just prior to the issuance of the September 18, 2019 One Month Notice.

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 testified that the tenant's behaviour was increasingly escalating, the landlord was unable to provide any examples of incidents involving the tenant since the One Month Notice was issued. Further, the resident who was reportedly kicked down the stairs by the tenant did not wish to address the incident through police and instead only reported it to the landlord.

In order to end this tenancy early, I find that the landlord would require more evidence of recent incidents involving the tenant to support the grounds for urgency in this matter as the landlord failed to provide any examples of the tenant's escalating behaviour since issuing the One Month Notice. The landlord had the option to pursue an Order of Possession on the basis of the undisputed One Month Notice served to the tenant on September 18, 2019, which provided an effective vacancy date of October 31, 2019. I find insufficient evidence that the tenant's behaviour has escalated to the point of

rendering it unreasonable or unfair for the landlord or other occupants to wait for that notice to take effect.

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 pursuant to section 56 of the *Act*. This tenancy continues until ended in accordance with the *Act*.

Conclusion

I dismiss the landlord's application for an early end to tenancy. 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: October 18, 2019

Residential Tenancy Branch