



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Len Boyko Properties
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

WC and CL attended for the landlord (“the landlord”). The tenant’s Social Worker and Outreach Worker, MK, NCD, agents, and advocate NB attended on behalf of the tenant who was not present (“the tenant”).

Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. The landlord acknowledged receipt of the tenant's evidence. Neither party raised issues of service. I find each party served the other in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on March 2019. Monthly rent is \$580.00 payable on the last day of the month. The tenant provided a security deposit of \$290.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The unit is one of five units in an apartment building. CL is the maintenance provider for the building and reports to GW, the property manager.

The landlord outlined their concerns about the tenant and explained why the tenancy should be ended immediately. They state the tenant has done one or all the following as outlined in section 56:

- (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;

The landlord submitted many documents in support of their position and presented considerable testimony. The landlord stated that the tenant was difficult to live with and other occupants in the building were afraid of him. They asserted that the tenant consumed mood-altering substances and was challenged by normal housekeeping.

The key submission is that the tenant has caused overflowing of the toilet in his unit on three recent occasions. This has damaged the floor of the bathroom and the ceiling of the laundry room below. The landlord asserted that the tenant is unable to manage normal operation of a toilet and should not be living alone or unsupported. He is unable to report to the landlord when the toilet is not working; he lacks the wherewithal to stop using a clogged toilet. As a result, he has caused damage to the unit and the building and another, possibly worse incident, is likely.

The testimony and documentary evidence may be summarized as follows:

1. The tenant is unable to care for himself because of mental disability, does not report maintenance issues to the landlord, breaks the toilet by attempting to fix it, continues to use the toilet when it is overflowing with feces, and causes water

- (sometimes mixed with fecal matter) to contaminate the floor;
2. On two occasions prior to the filing of this application on May 7, 2020, the landlord discovered that the tenant's toilet was not working and had overflowed; a timely response to limit damage was therefore not possible;
 3. In April 2020, the tenant caused clogging and overflowing of the toilet by putting a fork into the toilet, ostensibly to try to clear it. The tenant continued to use the toilet. Again, the landlord did not discover the damage in a timely manner and unnecessary costs for repair and maintenance resulted;
 4. The landlord testified that many hours of work were necessary on each occasion to clear the toilet, sterilise the floor and ceiling of the laundry room below, and repair the plumbing;
 5. On the next occasion, May 5, 2020, the tenant again broke the toilet; while this time there was no fecal matter overflowing, the landlord attested to the cost and expense of the repair;
 6. Since the filing of the application, another incident occurred on May 12, 2020 during which water from the tenant's toilet was "gushing into" the laundry room below the unit;

The landlord stated they are afraid that the tenant will cause serious damage to the floor of a bio-hazard type necessitating costly repairs including the replacement of the floor. They stated that it would be unfair and unreasonable to make the landlord wait for a hearing on a One Month Notice because of the potential for an untoward incident in the meantime.

The agents for the tenant submitted substantial testimony and documentary evidence, including photographs of the unit. They deny the tenant is responsible for the overflowing toilet; if he was, they have not been informed of the matter in order to put preventative measures in place. Their testimony is summarized as follows:

1. There is a comprehensive plan by government health services in place to support the tenant in day-to-day living;
2. They (the social worker and outreach worker who testified) had not been informed about the above-mentioned toilet overflowing incidents;
3. The tenant is currently in hospital and his release date was uncertain;
4. The tenant is receiving medical care which will increase his capacity to live alone upon his release;
5. On his release, the tenant would be provided with a telephone so he could quickly call for maintenance support;
6. Upon his release, care givers would visit him daily to assure that he can live

alone, dealing with normal household situations (such as a clogged toilet), and assist him as needed.

The agents denied that the overflowing toilet caused any permanent damage. They stated that there were many structural defects in the unit, such as inadequate wiring, and the landlord bears a share of responsibility for the difficulties the tenant is having. They submitted photographs of the unit, including the bathroom floor, which does not show any apparent damage to the floor.

The landlord requested an Order of Possession because of the tenant significantly disturbed the landlord and other occupants, the tenant has seriously jeopardized the health or safety of the landlord and building occupants, and he put the landlord's property at risk.

During the hearing, each party accused the other of being remiss in their obligations. The landlord alleged indifference by the agents of the tenant to his welfare. The agents of the tenant claimed the landlord had no basis to evict the tenant and simply wanted him out.

Analysis

The parties submitted considerable documentary and audio/video evidence in a hearing that lasted 86 minutes.

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

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 this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end of notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section states:

Application for order ending tenancy early

56 (1) *A landlord may make an application for dispute resolution to request an order*

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and*
- (b) granting the landlord an order of possession in respect of the rental unit.*

Policy Guideline 51 – Expedited Hearings provides guidance on applications of this nature.

To grant an order under section 56(1), I must be satisfied as follows:

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.

(3) If an order is made under this section, it is unnecessary for the landlord to give

the tenant a notice to end the tenancy.

(emphasis added in bold)

The landlord relied on sections (a)(i) and (ii). That is, the tenants had:

- (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;*

I accept the testimony of GW and CL that the tenant's toilet overflowed and that on two occasions prior to the commencement of this application, repairs and maintenance had to be done. I accept that the landlord has incurred cost and expense.

The words "significantly" and "seriously" denote a level of interference that *must* exceed interference to *some*, or *any*, extent. I am not satisfied that the landlord has met the burden of proof necessary for an Order under this section.

As well, I find the landlord has not met the burden of the second part of the test under section 56 which states:

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.

I find the landlord has failed to establish that it is unreasonable or unfair to wait for a section 47 notice to be issued, that is, a Notice to End Tenancy for Cause.

I acknowledge the landlord's concern that the State of Emergency may extend for an indeterminate period during which Orders of Possession under One Month Notices may not be enforced. The landlord stated this was one of the reasons an Order of Possession was being requested under section 56. However, I find it does not follow that it is unreasonable or unfair to the landlord to wait for a Notice to End Tenancy under section 47 (cause).

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has not met the onus of proving their

claim for an order under section 56 of the Act. As such, I dismiss the landlord's application without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: May 26, 2020

Residential Tenancy Branch