



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

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.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:54 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord and her daughter ("**CM**") 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. I also confirmed from the teleconference system that the landlord, CM, and I were the only ones who had called into this teleconference.

The landlord testified that she received the notice of dispute resolution proceeding form from the Residential Tenancy Branch (the "**RTB**") on April 22, 2020. The landlord and CM both testified that they watched an agent of the landlord (the boyfriend of another of the landlord's daughter) served the tenant with the notice of dispute resolution proceeding form and supporting evidence on April 22, 2020. Based on the corroborated testimony of the landlord, I find that the tenant is deemed served (pursuant to section 71 of the Act) with the required documents in accordance with the Act and the Rules of Procedure, notwithstanding the fact that the landlord did not submit a Proof of Service form to the RTB in advance of the hearing.

Issues to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

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

The parties entered into a fixed-term tenancy agreement starting February 1, 2020 and ending April 1, 2020. Monthly rent is \$600. The tenant did not pay any security deposit to the landlord.

The tenant originally rented a bedroom on the lower floor of the residential property. Another occupant rents a bedroom on the lower floor and shares a bathroom and kitchen facilities with the tenant. The landlord lives on the upper floor and does not share a bathroom or kitchen with the tenant.

On March 1, 2020, the tenant relocated from the bedroom on the lower floor to an outbuilding located on the residential property. She continued to have access to the bathroom and kitchen on the lower floor. The bedroom she previously occupied was rented to another tenant.

The landlord testified that, at approximately 10:00 pm on April 14, 2020, the tenant burst into the upper floor and started yelling. The landlord was asleep at the time, as was her seven-year-old grandson. The landlord came out of her bedroom and yelled at the tenant to leave the upper floor. The landlord testified that the tenant then attacked her. She testified that the tenant had to be pulled off her by other members of her family. The landlord's grandson remained in his bedroom during the assault but heard the whole incident. The landlord testified that she believes the tenant uses crystal meth, which may account for this attack. I have no corroboration of this allegation. However, the landlord did submit a copy of a undertaking provided by the tenant to the court which states she was charged with assault on April 14, 2020, and agreed not to enter the upper or lower floor except as to cook or to use the shower or toilet on the lower floor.

The landlord testified that the tenant refuses to leave the outbuilding, and that since the assault, the police have attended the rental property five or six times. She testified that the tenant yells and screams every night in an attempt to harass and wake her up.

The landlord testified that she has installed a deadbolt on her door and also keeps it barricaded at night. She testified she is afraid for her safety. She testified that her grandson will not return to the residential property so long as the tenant resides there.

Analysis

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

(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, 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 the landlord. I find that the tenant physically assaulted the landlord on April 14, 2020. I find that such an assault amounts to having seriously jeopardized the safety of the landlord and is both a significant interference and unreasonable disturbance.

As such, I find that the conditions at section 56(2)(a)(i) and (ii) are met.

I make no determination as to the landlord's allegation that the tenant uses illegal drugs.

I also find that it would be significantly unfair to the landlord to wait for a notice to end the tenancy under section 47. Such a delay is not appropriate given the violent nature of the tenant's conduct and given the tenant remains on the residential property. As such, I find that the landlord has satisfied the requirements of section 56(2)(b).

I order that:

- 1) the tenancy between the landlord and tenant is terminated effective May 14, 2020; and
- 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.

Conclusion

Pursuant to section 56(2) of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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 14, 2020

Residential Tenancy Branch