



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;
- 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 until 9:57 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified he served that the tenant with the notice of dispute resolution form and supporting evidence package via email on May 7, 2020. The landlord submitted a text message exchange wherein the tenant provided her email address to the landlord. I find that the tenant was deemed served with this package on May 10, 2020, three days after the landlord emailed it.

Issues to be Decided

Is the landlord / Are the landlords entitled to:

- 1) an order of possession; and
- 2) recover their filing fee?

Background and Evidence

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

The parties entered into a written tenancy agreement starting February 1, 2020. Monthly rent is \$1,000 and is payable on the last day of each month. The tenant paid the landlord a security deposit of \$500, which the landlord continues to hold in trust for the tenant.

The rental unit is a one-bedroom basement suite. The landlord rents out the upper suite to other occupants (the “**upper unit tenants**”). The landlord alleges that the tenant has significantly interfered with and unreasonably disturbed these occupants and has seriously jeopardized their safety. On these bases, the landlord seeks to end the tenancy early, pursuant to section 56 of the Act.

The landlord entered a written statement of the upper unit tenants, dated May 5, 2020, into evidence. In it, they state that:

- 1) on March 30, 2020, when they first arrived at the rental unit, the tenant appeared intoxicated and was “very vocal about personal matters”. They wrote that the tenant told them that the backyard was “her space”. Later that evening, they found the tenant intoxicated and crying in the driveway. They wrote that the tenant’s mental health “did not seem to be at a very good point”.
- 2) On April 1, 2020, the tenant was rude towards them and swore at them for obstructing the pathway to the residential property when they were moving their possessions into the upper unit. The tenant threatened to call the police if they did not move certain of their belongings. She yelled at the upper unit tenants. One of the neighbours overheard this and warned the upper unit tenants to be careful because the tenant was aggressive when drinking. The upper unit tenants did not feel safe around the tenant. That night they heard noises through the vents coming from the rental unit like “cackling, swearing, and strange monkey like noises”.
- 3) On April 2, 2020, the tenant tearfully apologized for her prior behavior on two occasions. The tenant “divulged a lot of personal information that was very triggering for [one of the upper suite tenants] to hear [and] mentioned suicide several times.”
- 4) On April 3, 2020, the tenant screamed at the landlord during a conversation where the landlord told her she had to leave by June 1, 2020. Later that day she yelled at the neighbours asking if they were the ones who “had gone to [the landlord]”. The tenant called the police later that day, for reasons unknown to the upper suite tenants. The tenant later invited the upper suite tenants into the rental unit to show them a large pool of water on the floor, which she attributed to a “malfunctioning window” in the rental unit. The tenant asked them to provide a written statement in her favour for the RTB. The upper suite tenants refused explaining that, despite the apologies, their experiences with her had been negative. The tenant apologized again. The tenant then fell into a bush. The upper unit tenants believed she was intoxicated.
- 5) On April 4, 2020, the upper unit tenant overheard a conversation between the tenant and the neighbor where the tenant discussed suicide and stating that she

would be “the next one to do” it. The upper unit tenants stated that they “are concerned for [their] well-being due to [the tenant’s] obvious declining mental state, volatility, and inability to act like a respectful person.” They wrote that the tenant’s actions have been stressful for them. They conceded that the tenant has never verbally threatened them, but that her demeanor comes across threatening. They are concerned that the tenant’s conduct may escalate in the coming months.

- 6) On April 5, 2020, the upper unit tenants, not hearing anything from the rent unit that day, called the non-emergency police line to do a wellness check. They feared the tenant had committed suicide. The police attended the rental unit, confirmed the tenant was alive, concluded the tenant was not actively suicidal, and left.

The upper unit tenants did not attend the hearing and did not provide any update on the conduct of the tenant, or if it escalated as they feared it would.

The landlord testified that the upper unit tenants mis-dated their statement, and that these events all occurred in May, and not April, of 2020. He testified that they did not move into the upper unit until May 2020.

The landlord characterized the upper unit tenants as “rattled” after their initial interactions with the tenant. He provided no testimony as to the tenant’s conduct towards them since the events described in the statement. He did testify that the tenant sends him 30 text messages on a regular basis threatening legal action against him for her damaged property resulting from the alleged leaky window. The landlord did not enter copies of these text messages into evidence. He testified that, to his knowledge, the tenant has not made an application with the RTB to recover the value of her damaged property.

The landlord testified he called the police on April 3, 2020 due to suicidal comments made to the him by the tenant via text message. He testified that, to his knowledge, the tenant was admitted to a hospital for two or three days. He submitted no documentary evidence to support this.

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 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 the tenant's conduct meets the requirements set out in section 56(2)(a) and (b) of the Act.

Policy Guideline 51 provides additional guidance on applications brought pursuant to section 56 of the Act. It states:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

The only documentary evidence of the tenant's alleged wrongdoing provided by the landlord is the written statement of the upper unit tenants. He did not provide copies of voluminous, threatening text messages he alleged the tenant sent him.

After considering the upper unit tenants' written statement, I do not find that the conduct of the tenant alleged therein rises to the level of conduct which would warrant an early end to a tenancy as set out in Policy Guideline 51.

The tenant has not verbally threatened the upper unit tenants. She did yell and scream at them at the start of their tenancy. However, this appears to have been an isolated incident. The tenant has apologized for her conduct. The upper unit tenants remain uneasy about the tenant. It is not unreasonable for them to feel this way. They wrote that they are worried this conduct could continue. However, I have no evidence that it has continued.

The description of the tenant provided by the upper unit tenants is one of a deeply troubled individual. The police have been called to the rental unit twice out of fear of the tenant committing self-harm. Such incidents, however, do not warrant an end to the tenancy.

I do not find that a single occurrence of yelling at the upper unit tenants, or off-putting or rude comments directed towards them, rises to the level Policy Guideline 51 requires for a tenancy to be ended early. I dismiss the landlord's application.

It may be that the tenant has continued to act in an offensive or disruptive manner towards the upper unit tenants since they prepared their written statement. However, I have no evidence before me of such conduct. I make no finding as to whether such continued conduct would meet the threshold for an early end of the tenancy.

Conclusion

I dismiss the landlord's application, without leave to reapply. The tenancy shall continue.

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 29, 2020

Residential Tenancy Branch