



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The John Howard Society of the Lower
Mainland and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

The landlord filed an Application for Dispute Resolution on May 28, 2020 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlord. The matter proceeded by way of a conference call hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on June 9, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The agent for the landlord attended the hearing; the tenant did not.

The landlord stated that they delivered notice of this dispute resolution to the tenant by posting the notice of this hearing to the door of the rental unit. This occurred on May 29, 2020 at 1050 a.m., with another building tenant witnessing. The tenant provided their name and signature attesting to this fact on a ‘Proof of Service’ document on May 29, 2020.

The landlord also stated that the staff at the property advised and asked the tenant about this pending hearing and tried to engage the tenant on that topic. The landlord stated that the tenant would ignore the staff members or walk away.

From what the landlord presents here on notifying the tenant of this hearing, I am satisfied they served the tenant notice of this hearing in a method prescribed by the *Act*. The landlord served the notice of this hearing on May 29, 2020. I make this finding pursuant to section 71(2)(b) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by section 56 of the *Act*?

Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of the tenancy for cause. After taking an oath from the landlord, I gave them the opportunity to speak to the issue.

The landlord confirmed the details of the tenancy agreement they provided as evidence for this hearing. The start date was October 30, 2018, with the agreement signed by both parties on October 29, 2018. The rent amount is \$442.00 per month. There was an initial security deposit of \$221.00 paid on November 1, 2018.

The landlord provided photos and oral testimony to show how the conduct of the tenant constitutes a reason to end the tenancy in an expedited fashion. The documents consist of photos showing the state of the rental unit, caused by the tenant acquiring objects and amassing materials to an extreme degree that causes issues of hygiene, odour, and health concerns for other units on the property.

Additionally, the landlord spoke to the issue of the tenant making threats to staff members. The last known occurrence of this was on May 7, 2020. The tenant had thrown objects at the staff of the property in the past.

The landlord feels that they had tried working with the tenant in the past; however, the issue is still prevalent. The suite remains a hazard to the building and the threats uttered by the tenant to staff in the building both constitute a real danger.

Analysis

Section 56 of the *Act* provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or

urgent circumstances. The legislation regarding an order of possession reads as follows:

- 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 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.

Section 56(2) sets out two criteria. First, the landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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 . . .

I have considered the evidence of the landlord concerning the conduct of the tenant and the state of the rental unit.

The landlord presents that the tenant made threats against staff members; however, there is no evidence of the exact nature of the threat, the receiving party, or specific dates or times. Allegedly this was a recurring pattern, yet the landlord could only present that the most recent incident was on May 7, 2020. There were no threats against the landlord directly, and the landlord did not provide evidence from other staff

members that threats were made. The landlord also knew of no specific utterances that show dire or urgent circumstances.

Additionally, the circumstances the tenant allegedly breaking glass in the unit are not known. Similarly, the context and facts of the tenant throwing some items at staff members is not shown clearly based on the evidence.

There is a discrepancy between the claim of an immediate risk involving threats, and the fact that the landlord applied for this hearing on May 28, 2020. This is three weeks after the latest incident involving a threat on May 7. This scenario does not bear out proof that a dire situation existed in line with the need for an immediate end to the tenancy.

In conclusion, I find the tenant's behaviour does not rise to a level that is sufficient to end the tenancy in this manner. This is based on the evidence presented by the landlord in this hearing. An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant. I find that the oral testimony presented by the landlord does not show this to be the case.

Regarding the state of the rental unit with numerous objects cluttering the entire unit, the landlord presents this unit has become a hazard to the rest of the tenants in the building. Although the landlord presented that a plumber would have difficulty entering the unit in the event of needed repairs, there is no actual immediate need for services as such to enter into the unit for the safety of all in the building.

The landlord also presents there is odour and pest insects emanating from the unit as a result of the belongings in the unit – in effect, polluting the building. Again, the evidence does not bear this out. There is no proof of an imminent danger to the level of significant risk of damage, either to the physical structure of the building, or other tenants or staff.

I understand the issue presents very difficult circumstances for all parties involved and is exacerbated by the conduct of the tenant. Given the section of the legislation the landlord has applied on to end the tenancy, an imminent danger with palpable effects is not proven by the evidence presented. The landlord has not shown that this means of ending the tenancy must happen over and above that of other sections applicable in the *Act*.

An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, so significant that it would warrant the tenancy end sooner than had the landlord issued a One Month Notice to End Tenancy for Cause. I find that the evidence and oral testimony presented by the landlord does not show this to be the case.

I find the landlord has not proven there is a valid reason to justify an order that ends the tenancy early by application of section 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a section 47 one month Notice to End Tenancy.

Conclusion

The landlord's application for an early end of tenancy and an order of possession for the rental unit 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 *Act*.

Dated: June 10, 2020

Residential Tenancy Branch