



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARIAS & ASSOCIATES PROPERTIES LTD and PELLETIER
LEGAL GROUP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 11, 2020 (the "Application"). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the "Act").

The Agent for the Landlord appeared at the hearing. The Agent called M.R. and Z.R. as witnesses at the hearing. The Tenant appeared at the hearing. I explained the hearing process to the parties. The parties and witnesses provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence. The Tenant confirmed receipt of these.

The parties and witnesses were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties and witnesses. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started March 01, 2019 and is a month-to-month tenancy.

The Agent for the Landlord testified as follows. He is concerned for other tenants in the duplex. Neighbours are calling the RCMP. There are disturbances at the rental unit at 2:00 and 3:00 in the morning. Children live in the area and it is not safe for them. The Tenant is disturbing other tenants and is dangerous. The police attended the rental unit and broke down the door for the Tenant's son. There was window damage. There is graffiti on the door.

M.R. testified as follows. The police have been called in relation to the Tenant several times, sometimes in the middle of the night. She took photos of damage to the rental unit including garbage, graffiti, bottles and cigarette butts. Other tenants are worried about problems with the Tenant and his son. Families with children live in the area and are worried.

In response to questions from the Tenant, M.R. acknowledged that she has not been inside the rental unit during the tenancy. M.R. testified that the graffiti on the door is in permanent marker. M.R. testified that she called the police and learned about the information included in her statement in evidence. M.R. acknowledged she did not personally observe the police attend the rental unit.

Z.R. testified as follows. She attends the rental unit building on a regular basis. There is garbage around the rental unit including cans and cigarette butts. Other tenants text and call her about issues with the Tenant and are concerned. The Tenant is disruptive to other tenants. Other tenants tell her in person what is going on with the Tenant. She is aware of several police calls. Other tenants do not feel safe because of the issues. The Tenant has graffiti on the door in permanent marker, the statement referring to selling marijuana at the unit.

In response to questions from the Tenant, Z.R. testified that she has not been in the rental unit.

In summary, the Agent submitted that the Tenant is a danger to other tenants and neighbours.

The Landlord submitted the following relevant evidence.

A written statement from the Agent stating as follows. The Tenant has damaged the property and left trash outside the door including liquor bottles and cigarette butts. The rental unit is non-smoking. The trash attracts raccoons and rats. The Tenant has disturbed other tenants and neighbours who have reported him to the RCMP on at least

three occasions. Tenants are scared of the Tenant and his son who fight frequently very late at night. Alcohol and drugs are involved in the fights. Police have attended three times around 2:00 and 3:00 in the morning and had to smash a door down on one occasion. Other tenants view the Tenant as a danger.

A written statement from M.R. stating as follows. She has witnessed damage to the property including graffiti and a smashed window. She is aware of police attendance where the police smashed a door down.

A typed statement from the Agent stating as follows. The Tenant is disruptive and a danger to other tenants. Police attended March 22, 2020. The Tenant's son threatened to kill the police. The police had to break a door. The Tenant has been interfering with, and threatening, workers doing renovations on the unit.

A photo of a window with cardboard over it. A photo of a broken door outside.

The Tenant provided the following testimony and submissions. None of the evidence given by the Agent and witnesses is based on personal knowledge. Nor have the Agent or witnesses provided the sources of their information.

The Tenant provided the following further testimony and submissions. Of course he leaves his garbage and recycling outside, there is nothing wrong with this. There is nothing in the tenancy agreement about not smoking. There is no evidence of rats in the rental unit. He knows the other tenants and does not have any issues with them. He is friends with the person who used to live above him. Neighbours are not scared of him. He does not disturb other tenants in the complex.

The Tenant provided the following further testimony and submissions. It is true that police attended, kicked in a door and that a window was broken. Police kicked in the bathroom door. His son's ex-girlfriend broke the window after police were called to get her out of the rental unit. His security deposit would cover the cost of the door and window. There is no evidence that police have attended at 2:00 or 3:00 in the morning.

I asked the Tenant if police have attended the rental unit other than in relation to his son's ex-girlfriend. The Tenant took the position that this is irrelevant. The Tenant stated, "who cares if police came" and that this was totally irrelevant. The Tenant submitted that, whether the police have attended or not, it is not an emergency situation.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am not satisfied based on the evidence provided that other tenants or neighbours are disturbed by the Tenant or his guests, concerned due to behaviour of the Tenant or his guests or have called police on the Tenant or his guests. Nor am I satisfied based on the evidence provided that other tenants or neighbours feel unsafe due to the Tenant or his guests. I would expect to see some evidence from the other tenants or neighbours if this was the case. For example, I would expect to see text complaints, email

complaints, written complaints or voice mail complaints. Z.R. testified that she has received such complaints, yet the Landlord did not submit any documentary evidence to support the testimony provided. Further, the Landlord did not submit witness statements from other tenants or neighbours. Nor did the Agent call any of the other tenants or neighbours as witnesses at the hearing. This is all the type of evidence I would expect to see if the Tenant or his guests were causing a significant interference, unreasonable disturbance or jeopardizing others' health or safety.

I am not satisfied based on the evidence provided that the Tenant has been interfering with, or threatening, workers doing renovations on the unit. Again, I would expect to see some evidence from the workers if this was the case. No evidence from the workers has been submitted.

In relation to smoking, graffiti on the door, garbage, bottles, cans and cigarette butts, these are not issues that warrant ending a tenancy under section 56 of the *Act*, which is reserved for the most serious of circumstances. These are all issues that should be dealt with through a One Month Notice if they meet the requirements of section 47 of the *Act*.

I accept that police attendance at the rental unit can be relevant in an application under section 56 of the *Act*. However, the relevance depends on how many times police have attended, when police attended, why police attended and what occurred when police attended. Further, the impact of police attendance on other tenants may be relevant if it amounts to an interference or disturbance. However, here, the Landlord has not submitted sufficient evidence about the alleged police incidents. I am not satisfied that the Agent or witnesses were present for any of the police incidents because they did not state they were. The Landlord did not call witnesses who were present at the police incidents or who called the police. The Landlord did not submit witness statements from such people. The Landlord did not submit police reports.

I accept that police attended the rental unit and broke down a door in the rental unit. I also accept a window was broken during this incident. The Tenant acknowledged this occurred. The Tenant stated that it occurred because of his son's ex-girlfriend. I understood the Tenant to state that they called police to get his son's ex-girlfriend out of the rental unit and that his son's ex-girlfriend broke the window. Given this, I am not satisfied the police attendance, broken door or broken window were due to the Tenant or someone the Tenant allowed on the property as my understanding is his son's ex-girlfriend was on the property without permission which is why police were called.

I do have some questions about the Tenant's account of this incident. However, it is the Landlord who has the onus to prove the circumstances. In the absence of further evidence, I am not satisfied the Landlord has. In the circumstances, I am not satisfied the police incident resulted from something the Tenant or his son did.

In relation to the March 22, 2020 police incident, and other police incidents mentioned in the evidence, there is insufficient evidence before me about these incidents. In the circumstances, I am not satisfied as to the details of these incidents and cannot be satisfied they meet the requirements of section 56(2)(a) of the *Act*.

In the circumstances, the Landlord has failed to prove the two-part test set out in section 56 of the *Act*. This is mainly due to the lack of evidence to support the testimony of the Agent and witnesses. In the circumstances, I decline to issue an Order of Possession under section 56 of the *Act*. The tenancy will continue until ended in accordance with the *Act*.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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 30, 2020

Residential Tenancy Branch