



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This expedited 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The landlord who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlord personally served the tenant with the Notice of Hearing and application for dispute resolution on July 23, 2020. The landlord submitted a signed and witnessed statement confirming service. Further to the testimony and evidence of the landlord which was uncontradicted, I find the landlord served the tenant as required under the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The landlord testified that the tenancy began on June 1, 2019 for monthly rent of \$1,650.00 payable on the first of the month. The tenant provided a security deposit of \$825.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement for the unit which is a basement suite below the personal residence of the landlord.

The landlord testified as follows. Beginning in March 2020, the tenant received countless daily visitors who often stayed only five minutes. The neighbours in nearby buildings complained to the landlord about the traffic throughout the night; the visitors often used garbage cans belonging to other buildings and disturbed their occupants. The landlord warned the tenant on July 6, 2020 and the tenant promised the frequent foot and vehicle traffic to his unit would cease. The constant comings and goings did not cease but “became worse” and “someone visiting the tenant drove up on our rock garden”.

On July 17, 2020, the RCMP attended the unit (six vehicles and accompanying officers), conducted a search of the unit, and arrested the tenant. The RCMP informed the landlord a loaded weapon was removed from the unit and the tenant will be charged with criminal offences as a result of “items of an illegal nature” that were seized. A confirming email dated July 22, 2020 from the RCMP was submitted as evidence.

The tenant was released from custody and continued to reside in the unit. On July 18, 2020, the tenant informed the landlord, “I was shot at 5 times yesterday” and accused the landlord of “ratting him out”. The constant coming and going “at all times of the day and night” and “suspected drug dealing” continued. The tenant refused to move out.

The landlord is afraid for her safety and said she cannot sleep.

The landlord requested an Order of Possession based on section 56 of the Act as follows:

The tenant has:

(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 stated that it was unreasonable or unfair to the landlord and the downstairs occupant to wait for a notice to end the tenancy under section 47 (landlord's notice).

The landlord requested an Order of Possession effective immediately.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's 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 to establish on a balance of probabilities that they are entitled to an order for an early end of the tenancy.

To end a tenancy early, the landlord must prove that the tenant has done something contrary to section 56 **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause ("One Month Notice"). Section 56 of the Act provides as follows [emphasis added]:

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.*
- (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

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.

The landlord relied primarily on sections 56(2)(a) (i) and (ii), that is, that *the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*

I have given significant weight to the oral testimony of the landlord which I find was supported in all key aspects by documentary evidence.

The landlord gave candid, forthright, credible evidence supported by a written statement and an RCMP email which established that the tenant was arrested, and a loaded weapon and “illegal substances” seized. The landlord was believable in describing the

events leading up to the tenant's arrest, the constant coming and going of "visitors" leading her to believe that the tenant is trafficking in drugs, and the complaints of neighbours. The landlord has credibly testified that the tenant has returned to the unit, appears to be using drugs and drug dealing, and accused the landlord of turning him in to the police. I find that the landlord has reasonably perceived this allegation as a threat. The landlord testified that because of the tenant's ongoing suspected drug use and his thinly veiled threat, the landlord is terrified.

I find the landlord has a justified fear for her personal safety at the hands of the tenant.

Considering the testimony and evidence, I accept the landlord's testimony documentary evidence and find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I find that the landlord provided sufficient evidence that it would be unreasonable to wait for a hearing for a One Month Notice, as the testimony and evidence presented by the landlord demonstrated a significant risk of injury to the landlord. I believe the credible and reasonable testimony of the landlord that she has a fear of imminent harm.

Given the nature of the tenant's threats against the landlord, I find it would be unreasonable and unfair to the landlord to wait for a hearing on a One Month Notice. On a balance of probabilities and for the reasons stated above, I find that the landlord's application satisfies all requirements under section 56 of the *Act*.

Accordingly, I allow the landlord's application for an early end to this tenancy and an order of possession will be issued effective on two days notice.

During the hearing, I cautioned the landlord to take all reasonable care to protect her safety. I advised the landlord to seek the protection and services of the police and to consult RTB about safety measures going forward. The landlord agreed to maintain close contact with the police to assure her well-being.

I grant the landlord a monetary award for reimbursement of the filing fee of \$100.00 which may be deducted from the security deposit held by her.

Conclusion

I grant an early end to this tenancy and an order of possession will be issued effective on two days notice.

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: July 30, 2020

Residential Tenancy Branch