



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes ET FFL

Introduction

The matter originally proceeded by way of a hearing held on July 28, 2020 and 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, pursuant to section 72.

On July 31, 2020 the tenant was granted their application for review consideration, and the Decision and Order dated July 28, 2020 were suspended until the Review Hearing scheduled for September 4, 2020.

The tenant was assisted by his advocate IC in this hearing. Both parties attended this Review Hearing, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As the landlord confirmed receipt of the notice of hearing and tenant's evidentiary materials for this hearing, I find the landlord duly served with the tenant's documents in accordance with sections 88 of the *Act*.

Preliminary Issue – Landlord's Evidentiary Materials

The tenant testified that he had only received the landlord's original hearing package containing 8 pages. The landlord testified that she had served the tenant with additional evidentiary materials, which the tenant refused. The landlord submitted a photo of the attempted service on the tenant. The landlord testified that she had then attempted to serve the tenant by posting the documents on the tenant's door.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

Despite the landlord’s testimony that she had attempted to serve the tenant, I am not satisfied that the tenant was indeed served with these additional materials in the manner required by section 88 of the *Act*. I find the landlord had failed to provide sufficient evidence to prove service on the tenant. I find it would be prejudicial to admit evidence that the tenant did not have an opportunity to review and respond to. Thus I exercise my discretion to exclude the landlord’s additional evidentiary materials.

The landlord was given the opportunity to consider her options, including an adjournment to allow the service of the evidentiary materials. The landlord testified that she still wished to proceed with the scheduled hearing on the basis of her sworn, oral testimony and the original evidence package served on the tenant.

The hearing proceeded.

Issue(s) to be Decided

Should the Decision and Order dated July 28, 2020 be confirmed?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on March 1, 2017, with monthly rent set at \$930.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$475.00.

The landlord applied for an early end to this tenancy on the basis of several incidents that have taken place during this tenancy, which has caused the landlord to fear for her personal safety. The landlord testified that on or about June 20, 2019, the tenant had assaulted her by placing his hands around her neck. The incident took place after the

landlord had objected to him being in the laundry room outside of the designated days and times. The landlord confirmed that despite several calls to the police and incident reports, the tenant has not been charged or convicted.

The landlord testified that the tenant continues to act in a threatening manner towards her, and frequents the exterior and common areas of the property which is shared with the landlord. The landlord testified that she has no privacy, and the tenant has been observed in only his underwear and with his hands down his pants.

The landlord feels that the tenant suffers from mental instability, and is violent. The landlord testified that the tenant would often argue with her, and on August 19, 2020 the tenant was found hiding on the property with a utility knife, which he threatened her with. The landlord testified that the tenant would deny all these incidents after they took place.

The landlord testified that the tenant has thrown heavy potted plants, destroying the planters. The landlord provided multiple police numbers for the incidents that have taken place.

The tenant disputes the landlord's allegations and testimony that he has threatened or intimidated her. The tenant, who suffers from a brain injury, testified that the landlord was the one harassing him, and the application to end the tenancy was only filed as retaliation for past disputes filed by the tenant. The tenant does not dispute that an incident did take place over the use of the laundry room, which resulted in an altercation. The tenant noted that this incident took place in June of 2019, and the landlord only filed this application after the tenant filed his monetary claim.

The tenant testified that the landlord had sprayed him with a hose, and he responded by saying that he would cut the hose. The tenant also disputes that he walks around in his underwear, or makes gestures at the landlord.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord provided sworn testimony, as well as written statements, stating that the tenant is a threat to her personal safety.

The landlord confirmed that the tenant has not been served with a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, nor has the landlord applied for an Order of Possession pursuant to any Notices to End Tenancy. The landlord, in their application, is attempting to obtain an early end to tenancy as they feel that the tenant has engaged in repeated incidents that have caused the landlord concern and fear for her personal safety and well-being.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for

obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although the alleged assault took place in June of 2019, and although the landlord testified to further incidents that have caused her great concern, the landlord has not issued the tenants any 1 Month Notices to End Tenancy. The landlord's failure to pursue an Order of Possession pursuant to a 1 Month Notice does not automatically qualify them to apply under section 56 of the Act. Although the landlord has provided supporting evidence to demonstrate that the police have been contacted, and incident reports have been filed, the landlord has not provided confirmation of any charges laid against the tenant.

The tenant disputes the landlord's allegations and testimony, stating that the landlord filed this application as retaliation for past disputes initiated by the tenant. The tenant disputes that he has threatened the landlord, and testified that the landlord was the party who initiated the incidents knowing that he suffers from a brain injury.

Although I accept the landlord's testimony that the tenant's actions have caused her much stress and concern, I find the incidents described arises from ongoing disputes between both parties. I find that the landlord has played a role in the ongoing disputes, and although I sympathize with the landlord that the relationship between the parties has deteriorated to the extent where the landlord no longer want the tenant to reside in the home or be found on the property, I find that the landlord failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. I find that the initial assault described by the landlord took place over a year ago, but the landlord has not served the tenant with any 1 Month Notices, or has any charges been laid against the tenant. I am not satisfied that the landlord has provided sufficient evidence to support that the tenant is an immediate or ongoing threat to her or other occupants, or the property. For these reasons, I dismiss the landlord's application for an early end to this tenancy without leave to reapply.

As the landlord was not successful with her application, the landlord's application to recover the filing fee is also dismissed without leave to reapply.

Conclusion

I am not satisfied that the landlord has met the grounds required for an Order of Possession under section 56 of the Act. The Order of Possession dated July 28, 2020 is

cancelled. The landlord's application to recovery the filing fee is dismissed without leave to reapply.

I order that this tenancy continue until ended in accordance with the *Act*.

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: September 4, 2020

Residential Tenancy Branch