



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DD INN MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the tenant received the landlord's hearing materials, including a USB stick containing a video, by registered mail. The tenant confirmed he was able to view the video and I admitted it into evidence.

I confirmed the landlord received the tenant's evidence and, although it was served late, it was admitted into evidence as there was no objection by the landlord.

The tenant's advocate pointed out the landlord erred in naming the advocates as tenants in filing this Application for Dispute Resolution. I confirmed this was done in error by the landlord. The style of cause has been amended to exclude the names of the tenant's advocates.

Issue(s) to be Decided

1. Has the landlord established a basis for ending the tenancy early and obtaining an Order of Possession under section 56 of the Act?
2. Recovery of the filing fee.

Background and Evidence

The parties were in agreement that there is no written tenancy agreement; the tenancy started in, approximately, September 2018; the tenant paid a security deposit of \$300.00; and, the tenant was required to pay rent of \$600.00 on the first day of every month.

The landlord submitted that it seeks to end the subject tenancy early because the tenant threatened the landlord's manager with physical assault and threw an explosive device (firecracker) at him on September 9, 2020.

The landlord's manager testified that he approached the tenant and told the tenant the time was nearing for him to move out and the tenant became very angry. The tenant threatened to punch him in the face and after the manger walked away the tenant threw the firecracker at him. The tenant then set off firecrackers behind his own truck. The manager called the police and five police officers responded. The tenant was charged at the scene and then released shortly afterward.

The landlord raised other issues pertaining to the tenant changing the locks and allegations of the tenant harassing another tenant in late June 2020 and early July 2020; however, I heard those matters were the basis for the landlord issuing two One Month Notices to End Tenancy for Cause to the tenant in August 2020. The tenant filed to dispute the One Month Notices. Since the matters involving the changing of locks and allegations of harassing another tenant resulted in issuance of One Month Notices several weeks prior to filing this Application for Dispute Resolution, and disputed by the tenant and set to be heard in different proceedings, I informed the parties my focus for this proceeding was the incident of September 9, 2020.

The tenant testified that on September 9, 2020 the manager approached him and told him he had to move out and that the manager would be involving law enforcement. The tenant stated that he felt threatened and uncomfortable by such statements. The tenant described both he and the manager as yelling obscenities and giving "the finger". After the manager walked away toward the building the tenant threw a firecracker at the manager. The tenant stated the firecracker did not come close to hitting the manager. The tenant acknowledged that after the police attended, he was charged with possession of a weapon because more firecrackers were found in his pocket.

The tenant's advocates submit the tenant acted out of frustration and the charges have recently been dropped.

During the hearing, I orally informed the parties of my decision to grant the landlord's application. I proceeded to explore possible move-out dates with the parties. The landlord requested an Order of Possession effective as soon as possible. The tenant submitted there are few available rentals in the area and requested that he be permitted occupancy until after the winter. The tenant's advocate requested that I consider that the tenant is on Income Assistance and is disabled.

The tenant submitted that he sent a rent payment to the landlord for October 2020 rent, via e-transfer. The landlord acknowledged that to be correct but the landlord's agent stated the payment has not been deposited and will not be deposited so as to assist the tenant in having funds to move out.

Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 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
 - (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.

Upon consideration of all of the evidence before me, namely testimony of the tenant and the manager and videos provided by both parties of the altercation on September 9, 2020, it is undeniable that the tenant threw a firecracker at the manager after the manager walked away from the verbal argument they were having by the tenant's truck. Since the manager had walked away, I find the tenant was not in any imminent danger of being harmed by the manager and the tenant decision to throw a firecracker at the manager was an act of aggression with a device that had potential to cause physical harm to the manager. I consider the tenant's action to be violence and put the manager at serious risk of being harmed and just because the tenant did not succeed in making contact does not diminish the level of aggression and violence he chose to utilize in response to a verbal argument.

In addition to the actions described above, the manager also asserted the tenant orally threatened to punch the manager in the face. The tenant did not acknowledge such statements in his testimony but he did not deny it either. The videos provided to me do not have any sound.

A landlord has the right to conduct business, including use of agents or managers, and the landlord has a duty to protect its employees in addition to protecting its other tenants and occupiers of the property from harm. I find it unreasonable to expect the landlord's manager to be subjected to violence by a tenant.

Although the tenant has avoided a criminal charge with respect to possession of a weapon, the burden of proof in tenancy disputes is the lesser civil standard of "on a balance of probabilities". It remains that the tenant did throw a weapon at the manager after the manager walked away from their argument and the tenant had more firecrackers in his possession when the police attended the scene. On a balance of probabilities, I find the tenant's actions:

- (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;

and it would be unreasonable for the landlord to wait for a One Month Notice to take effect given the risk of physical harm by the tenant.

In light of the above, I grant the landlord's application.

I have considered the parties respective requests with respect to the date this tenancy comes to an end and I order the tenancy ended and the tenant is required to vacate the rental unit within one week of today's date, or October 8, 2020.

I award the landlord recovery of the \$100.00 filing fee. The landlord is authorized to deduct \$100.00 from the tenant's security deposit to recover this award.

Conclusion

I have ordered the tenancy is ended and the landlord is provided an Order of Possession effective October 8, 2020.

The landlord is awarded recovery of the filing fee and is authorized to deduct \$100.00 from the tenant's security deposit to recover this award.

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: October 01, 2020

Residential Tenancy Branch