



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On May 20, 2021, the Landlord submitted an Application for Dispute Resolution under Section 56 of the *Residential Tenancy Act* (the “Act”) requesting that the tenancy end early and for an Order of Possession for the rental unit, and to be compensated for the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord, the Tenant and the Tenant’s advocate attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Landlord testified that she forwarded the documentary evidence to the Tenant; however, did not provide a piece of digital evidence. The Tenant acknowledged that he received the Notice of Dispute Resolution Proceedings and attached documents from the Landlord and confirmed that he did not submit any evidence for this hearing.

As the Tenant was not served the Landlord’s digital evidence, I find that it is inadmissible, pursuant to *Residential Tenancy Branch Rule of Procedure 3.14*. The Landlord did not refer to this evidence and I did not consider this evidence during the hearing.

Preliminary Matter

Towards the end of the hearing, the Tenant’s advocate asked to adjourn the hearing as the Tenant had had some problems submitting his own evidence for this hearing. When I mentioned that the Tenant seemed to have been able to submit evidence for another application with the Residential Tenancy Branch without any problems, the advocate indicated he was not aware of this situation.

When considering the Tenant’s request for an adjournment, I find that the Tenant failed to provide sufficient information as to how he could not submit evidence for this hearing. I find that the Tenant demonstrated his ability to submit evidence in relation to another

application and that this fact conflicted with the Tenant's submissions as to why this hearing should be adjourned. I also find that the Tenant had an opportunity to speak to the Landlord's submissions and present his own testimony during this hearing.

Pursuant to *Residential Tenancy Branch Rules of Procedure 7.11*, I refuse the Tenant's request for an adjournment.

Issues to be Decided

Should the Landlord be granted an early termination of the tenancy and receive an Order of Possession, in accordance with section 56 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on March 1, 2017 and continued as a month-to-month tenancy. The rent is \$1,300.00 each month. The Landlord purchased the residential property in December 2020 and the tenancy continued. The Landlord holds a security deposit in the amount of \$625.00.

The Landlord stated that there was one incident that demonstrated that the Tenant poses an immediate and severe risk to the Landlord.

The Landlord testified that, on May 1, 2021, the Tenant, during a phone call with the Landlord, was verbally abusive and threatened her by saying, "if you ever evict me, that will be the end of you."

The Landlord acknowledged that no one else heard the threat; however, submitted a screen shot of a text message from her father. The screen shot indicated that the Landlord's father documented a conversation he had with the Tenant, on May 2, 2021; the Tenant admitted to losing his temper with the Landlord, said that he had been very mean to her, and asked the Landlord's father to apologize to the Landlord for him.

When asked, the Landlord stated that she felt, based on the Tenant's threat, that her life was in danger.

The Landlord stated that she did not contact the police about the threat and that the Tenant has not followed up in any way. The Landlord testified that she served a 10 Day Notice to End Tenancy for Unpaid Rent to the Tenant on May 5, 2021 and confirmed that there have been no further threats.

As a result of the Tenant seriously jeopardizing the health and safety of the Landlord, the Landlord is requesting an early end of tenancy and an Order of Possession.

The Tenant denied threatening the Landlord and testified that the Landlord must have misunderstood him when he was telling her that he was going to bring in “environmental health” because of the rat problem in his rental unit.

The Tenant’s advocate submitted that the Tenant is not an immediate and severe risk to the Landlord as they live in different cities.

The Tenant described himself as “disabled” since 1995 and a recipient of 8 back operations with several screws in his lumbar spine. The Tenant re-stated that he is not a threat and did not threaten 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 to request an Order of Possession on a date that is earlier than the tenancy would end if a Notice to End Tenancy were given under section 47 of the Act.

In order to end a tenancy early and issue an Order of Possession under section 56, 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 wellbeing 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 causes for ending the tenancy early, as listed above, are identical to the causes for which a landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the landlord has the grounds to end the tenancy for cause is that when a landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the landlord must also prove that it would be unreasonable or unfair to the landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the tenant must be extreme and require immediate action.

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the arbitrator must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property to wait for a Notice to End Tenancy for Cause to take effect (at least one month).

When I consider the Landlord's testimony that she didn't call the police and then served a Notice to End Tenancy after receiving the threat of "if you ever evict me, that will be the end of you.", I have difficulty believing that the Landlord felt that her life was in danger. I accept the Landlord's evidence that the Tenant has not caused further concern or made any other threats since the May 1, 2021 conversation.

Although the parties provided conflicting testimony regarding the threats, I lean, based on a balance of probabilities, that the Tenant was abusive towards the Landlord during the May 1, 2021 phone call. Regardless of whether the threat occurred, I am not satisfied that the Landlord may have grounds to end this tenancy for cause, pursuant to section 56(2) of the Act.

Although prompted during the hearing, the Landlord did not speak to why it would be unreasonable or unfair to the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect.

Based on the submissions from all parties, I find that the Landlord failed to provide sufficient evidence that there was a legitimate threat from the Tenant or that the threat during the May 1, 2021 telephone conversation was so extreme that it would be unreasonable, or unfair to the Landlord or the Tenant to wait for a notice to end the tenancy under section 47 of the Act to take effect. As a result, I dismiss the Landlord's Application to end the tenancy early.

As I have dismissed the Landlord's Application, I find that the Landlord's Application is without merit. As such, I dismiss the Landlord's claim for compensation for the filing fee.

Conclusion

The Landlord's Application for an order to end the tenancy early is dismissed without leave to reapply. I order this tenancy to 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: June 15, 2021

Residential Tenancy Branch