



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROLINE MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ET, FFL

Introduction

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

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence in person on August 10, 2021. Both parties also confirmed the landlord served the tenant with a subsequent evidence package in person on August 18, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and an order of possession?
Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord. The landlord provided written details which states,

Tenant has taken to threatening residents at the building by using racially charged language, yelling slander such as "nigger lover" and that he was going to kill brown people. The police have been called on several occasions and there are numerous police files indicated in the evidence.

[reproduced as written]

The landlord claims that the tenant has verbally assaulted, harassed and threatened other occupants of the rental property. The landlord stated that as per a July 14, 2021 letter the Strata Counsel received a complaint that on July 9, 2021 the tenant "behaved in a manner that is intimidating and upsetting neighboring Residents", by using binoculars to look into neighboring units and taking video; standing on the balcony naked, making odd hand movements and gestures, and doing lunges; standing in an arms crossed manner at the deck railing looking into neighboring units late at night; pacing across the balcony and making noise by rearranging furniture after midnight; keeping the balcony lights on continuously; threatening other Residents at the building by using racially charged language, yelling slander such as "nigger lover" and that he was going to kill brown people." The landlord also refers to a bylaw violation letter #1 which is an email dated July 12, 2021 of a "Bylaw Violation Report" by a tenant, J.O. who has reported that the tenant was using binoculars and video to watch his unit. The landlord referred to a bylaw violation letter #2 which is an email dated July 19, 2021 of a "Bylaw Violation Report" by a tenant, J.B. who reported that "Banging, moving things around through early hours of the morning. Screaming outside using racial, sexual and threatening language" coming from the tenant's unit. The landlord referred to a bylaw violation letter #3 which is an email dated July 14, 2021 of a "Bylaw Violation Report" by a tenant, J.O. who reported that the tenant was "standing on his balcony screaming for all of the residents to hear...He proceeded to yell things such as "Nigger lover" and "you brown people...told me he wanted to meet me downstairs as he can kill a man in 20 seconds due to his martial arts background...The only engagement I had with him was asking him "is that a threat?" and he said "yes"...My girlfriend and I do not feel safe. We feel extremely violated, disgusted and appalled...We are fearful for our lives given his mental instability...This man is screaming out racial slurs from his balcony to ours." The landlord referred to a bylaw violation letter #4 which is an email dated July 14, 2021

of a "Bylaw Violation Report" by a tenant, J.O. that the tenant "was threatening us from his balcony. Yelled out "nigger lover", said he was going to kill us brown people. A lot more was said We called the police and they took him away." The landlord has referred to a witness statement #1, which is a forwarded email dated July 14, 2021 another occupant in the building. The landlord stated that this was a report of a man yelling and screaming on July 13, 2021 from his deck at another tenant. The email references "shouting, swearing, threatening other tenants/owners, and using terms including threats of killing people, using the word "nigger", which caused us to feel threatened...This person has been seen on his deck naked last weekend, and was viewed by my son, Z. on Monday afternoon out on his deck screaming profanities...

The landlord also references an "Undertaking" a release document dated July 29, 2021 in which the tenant has consented to sign and agree to go to court to resolve a criminal harassment offence.

The landlord called the witness, J.O. a tenant of an adjacent building in the complex. The tenant provided undisputed affirmed testimony that he viewed the tenant viewing his rental unit via a video camera from his deck. The witness stated that he confronted the tenant from his deck stating, "We can see you viewing us". The witness stated that the tenant would yell or scream racial slurs. When asked why the witness feels threatened the witness stated that the tenant was "calling me a nigger lover" while making punching gestures. The witness stated that the tenant had commented that "I look at your girlfriend". The witness stated that the tenant called him a "Mexican". The witness stated that he and his girlfriend are so upset that they do not go out and keep their doors locked. The witness stated that "we feel he will harm us"; "we feel threatened and terrified" as the tenant has openly displayed aggression.

The tenant disputes the landlord's claims arguing that no investigations/findings have been made by the strata council concerning these filed complaints. The tenant has argued that at no time has the tenant ever received a notice regarding any complaints. The tenant argues that he is the victim of harassment by the victim/witness in this case. The tenant points out that he has called the police regarding this issue and they have made no further investigation into the matter.

The tenant argues that the landlords claimed issues are not relevant to section 56 of the Act in that there is no immediate and severe risk to other occupants. The tenant stated that the provided bylaw violation reports appear to be made all by the same person. The tenant stated that no action has been taken by the strata concerning these reports/complaints. The tenant also argued that the victim/witness in this case is a

resident of a separate building from which the tenant already has consented to not going to and not having any contact with the complainants.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

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

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be "unreasonable or unfair" to wait for a cause notice to take effect.

In this case, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence that the tenant presents an immediate and severe risk to the rental property, other occupants or the landlord. Despite this being a Strata Complex, the named tenant lives in one building and the witness lives in a separate building. Both parties have confirmed that the tenant has consented to obey the undertaking in which the named tenant would not go to that address or contact that complainant, R.C. I also note that the complainant in that offence is different than the witness that attended the

hearing, J.O. I also find that despite numerous bylaw violation reports filed, no investigations nor findings have been made by the strata council.

Conclusion

The landlord's application for an early end to the tenancy and an order of possession is dismissed.

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: August 24, 2021

Residential Tenancy Branch