



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 made under section 56 of the Act, via teleconference call.

The landlord appeared and was affirmed and ordered to not record the proceeding. The landlord had two witnesses with him at the commencement of the hearing. The witnesses were excluded with instruction to wait until called to testify. The landlord called both of his witnesses during the hearing and they provided affirmed testimony.

The tenants did not appear for the hearing despite leaving the teleconference call open for over an hour. Since the tenants did not appear, I explored service of hearing materials upon the tenants. The landlord testified that he served each tenant with a copy of the proceeding package and all of the same evidence he submitted to the Residential Tenancy Branch via registered mail sent on July 28, 2021. The landlord provided the registered mail receipts, including tracking numbers, as proof of service.

Pursuant to section 90 of the Act, a person is deemed to be in receipt of mail sent to them five days after mailing even if the recipient refuses to accept or pick up their mail. In keeping with section 90 of the Act, I found the tenants deemed served with the proceeding package and evidence. Accordingly, I admitted the landlord's materials for consideration in making this decision and I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord is entitled to an Order of Possession under section 56 of the Act?

Background and Evidence

The month to month tenancy started on January 1, 2021. The landlord collected a security deposit of \$1050.00 and the tenants are required to pay rent of \$2100.00 on the 30th day of every month.

The residential property was described as having two living units. The subject rental unit is located on the main floor of the house and the other living unit is located above the rental unit and is occupied by another tenant.

The landlord made this application on July 8, 2021 and submitted the following details of dispute:

“On July 6, 2021 tenants from unit B built structure across driveway on front of the property to prevent the Landlord to go to back yard, Breached all material terms of the tenancy agreement, Damaging property changing back yard it to junk yard ,doesn of people subletting illegally ,drugs used inside the unit, Landlord been threaten on July 5 and assaulted by one of sublets ,police been involved, Landlord recived doesns of complais from other tenant about noise overnight and illegal activities,”

Landlord's evidence

The landlord testified that the tenants are using drugs and allowing other drug addicts to occupy the rental unit. The landlord described the behaviour of the tenants and/or the persons they permit on the property to be “wild” and disturbing the other tenant residing on the property by their excessive noise and people frequently coming and going at all hours of the night. The landlord also stated there was a near death at the property and the police and been called to the property several times to deal with the goings-on at the property.

The landlord testified that when the landlord and his former property manager attended the property, the tenants and/or the persons they permit on the property are verbally abusive and one occasion the landlord was assaulted when he was pushed. In

addition, a former tenant came to the residential property to check for mail and one of the persons permitted on the property by the tenants assaulted him by hitting him with a shovel. The former tenant called the landlord to ask for a drive to the police station and the landlord came and picked him up and took him to the police station. A criminal charge has been laid against the assailant.

The landlord testified that the window to a storage area was broken and his tools stolen. The landlord testified that he has made an insurance claim for the break and enter and theft . The landlord is of the believe the tenants and/or the persons they permit on the property are responsible for the broken window and stolen tools as the landlord subsequently spotted one of his tools in one of the occupant's vehicle and the tenant also returned one of his tools to him.

The landlord is of the position the tenants and/or the persons they permit on the property are damaging the property by drilling holes in the walls to run cables, which created an electrical problem, including no electricity in the rental unit; constructing an unsightly mosaic sidewalk overtop of the concrete; and constructing an unsightly fence/gate out of pallets across the property in an effort to prevent the landlord from accessing the property.

In addition, the tenants stopped paying rent after June 2021 and say they will not move unless the landlord pays them several thousand dollars. The landlord stated he has filed a complaint of extortion with the police.

The landlord provided evidence that included the tenancy agreement; proof service of the hearing materials; warning letters issued to the tenants; photographs of discarded furniture and other debris in the yard, the gates constructed out of pallets and plywood, and the mosaic sidewalk; two police cards including police file numbers; and, a document from the landlord's insurance company with respect to an insurance claim filed by the landlord.

Landlord's witness – RB

The landlord called RM, the tenant occupying the upper suite at the property, as a witness. RM was affirmed.

RM testified that he resides in the living unit located directly above the subject rental unit. RM testified that he has witnessed the tenants and/or their guests or occupants using drugs such as "meth" and fentanyl. Multiple people come and go from the rental

unit and the residential property at all hours, which RM suspects involves drug dealing, and this creates a lot of disturbances for RM in the late evening and night due to frequent yelling and fighting.

RM testified that the electrical service to the rental unit is not working and the tenants were using a generator before it was stolen. The tenants and their occupants also use candles in the rental unit and that has already caused one fire. Further, a horrible smell is coming from the rental unit that RM attributes to rotting food since the fridge has no electricity.

RM testified that since the tenants moved in, several things have been stolen from the property that belonged to RM, including items stolen out of his work truck, and RM fears his other property may get stolen.

RM described his quality of life at the residential property as having declined significantly since the tenants moved in given the excessive noise and he fears another fire and further thefts should the tenants be permitted to remain. RM testified that given his concerns of fire and goings-on at the property he started to get someone to check on his dog at his living unit.

In addition, RM testified that there is garbage everywhere on the property.

RM stated the police have attended the property many times to deal with the tenants and/or persons permitted on the property by the tenants.

Landlord's witness – JY

The landlord called his former property manager, JY, as a witness. JY was affirmed.

JY testified that he had been acting as the landlord's property manager up until two months ago when he quit due to the conduct of the subject tenants and/or their occupants.

JY testified that he would give the tenants warnings about their breaches of the tenancy agreement and the tenants would be abusive toward him and make statements such as "I know where you live" which JY took as a threat. JY was so concerned about the threats that he has had security cameras installed at his residence.

JY stated that the tenants and their occupants stay up late and he found many little bags around the property, which JY attributed to the tenants and/or their occupants being drug addicts.

JY stated that the tenants or persons they permitted on the property fight with each other and steal. They also have fires in the backyard which JY implied is very dangerous especially during the very dry conditions.

JY stated that he still accompanies the landlord when the landlord goes to the property to ensure the safety of the landlord as JY described the tenants and/or their occupants as “crazy”.

Analysis

Under section 56 of the Act, the Director may order the tenancy ended earlier than if the landlord had issued a One Month Notice to End Tenancy for Cause (“1 Month Notice”) and grant the landlord an Order of Possession. Accordingly, section 56 is intended to apply in the more urgent and severe circumstances. 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.

[My emphasis underlined]

In this case, I was provided unopposed evidence from the landlord that included affirmed testimony of the landlord and two witnesses. Upon hearing from the landlord and his two witnesses, I find the testimony provided by each person to be relatively consistent. I further find the documentary and photographic evidence provided to be consistent with their testimony. As such, I accept the submissions before me that the tenants and/or persons they permit on the property are unreasonably disturbing the other occupant on the property by way of excessive noise that includes yelling and fighting and frequent late-night activity. I also accept that the tenants and/or persons they permit on the property are putting the other occupant and the landlord's property at significant risk due to break and enter and theft and potential for fire given their drug use

and use of candles and backyard fires. It is also apparent to me that warnings from the landlord and/or his property manager were met with threats and assault. Therefore, I find the landlord has satisfied me that the tenancy should be ended early and the landlord provided an Order of Possession under section 56 of the Act.

In keeping with the above, I order the tenancy ended effectively **two (2) days after the tenants are served with the Order of Possession** that accompanies this decision.

The landlord was successful in this Application for Dispute Resolution and is awarded recovery of the filing fee. The landlord is authorized to deduct \$100.00 from the tenants' security deposit to recover this award.

Conclusion

Pursuant to section 56 of the Act, I order **the tenancy is ended effective two (2) days after the tenants are served with the Order of Possession** that accompanies this decision.

The landlord is authorized to deduct \$100.00 from the tenants' security deposit to recover the filing fee paid for this Application for Dispute Resolution.

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 18, 2021

Residential Tenancy Branch