Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlord filed an Application for Dispute Resolution on July 22, 2021 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlord. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on September 2, 2021. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

Both the landlord and the tenant attended the hearing. I provided both parties the opportunity to present oral testimony and make submissions during the hearing. Each party confirmed they received the prepared documentary evidence of the other; on this basis, the hearing proceeded.

Issue to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause by s. 56 of the *Act*?

Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for

an early end of tenancy. After taking an oath from both parties, I gave each the opportunity to speak to the issue at hand.

The landlord provided both documentary evidence and oral testimony to show how the conduct of the tenant constitutes a reason to end the tenancy for cause. This shows the following actions of the tenant:

- they issued a notice to end tenancy at the beginning of July 2021;
- on July 17, the landlord arrived at the property to perform yard maintenance – the tenant took issue with the landlord parking in the driveway, and a conflict ensued
- the tenant assaulted the landlord: after stating “you wanna go”, they pushed the landlord who fell backward
- the RCMP hardcopy in the evidence shows “[landlord] then stated [tenant] basically walked through him and pushed him out of the way. . .[landlord] did not wish for criminal charges but wanted [tenant] spoken with regarding the assault / eviction.”
- the gas supply to the rental unit was disconnected – this poses a risk to the house with the potential for freezing pipes
- the lawn, being “up to 3 feet in length”, poses a fire risk danger – its maintenance is the tenant’s responsibility.

The tenant in the hearing provided their own version of events of July 17. The landlord’s own fall was call by bodily collision with the tenant, rather than a deliberate push. The call to police was not until 1 hour later, with the landlord resuming yard work very soon after the incident. There is “no threat posed by me” and “there is no reason to believe there’s a pattern of behaviour that has to be watched out for.”

The police attended with the landlord on a subsequent inspection visit 4 or 5 days after July 17th. The tenant submitted this was at their own behest, where they “believe a threat exists” with the threat here being the potential for false accusations being charged by the landlord. For another inspection on August 27, the landlord in the hearing submitted they called the police to attend, “there to keep the peace.”
The tenant specified there was no immediate threat to the pipes due to cancelled gas service, with temperatures currently nowhere near what it would take to freeze pipes. Additionally, they stated the reconnection of the gas service on their own initiative was imminent. They also submitted the landlord had the appropriate means to address any tenant non-performance of required yard maintenance – this is the tenancy agreement itself, with legal means of reparation where a party does not follow the necessary terms.

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

> 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 tenancy were given under s. 47 *[landlord's notice: cause]*, and
> (b) granting the landlord an order of possession in respect of the rental unit.

The *Act* s. 56(2) follows with two criteria. First, as per subs. (1) the landlord must provide the cause for issuing the Notice. Additionally, the evidence must show, as per subs. (2), it would be unreasonable or unfair to the landlord to wait for a set period Notice to End Tenancy to take effect under a different s. of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

> 56(2) . . .
> (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 . . .

Clearly the parties are not on cordial terms; however, I find this has not risen to the threshold where an immediate and severe risk to the property or the landlord is the reason for ending the tenancy. The landlord has not provided sufficient evidence to show there was an actual assault. They chose not to press charges with the RCMP; moreover, they stated in the hearing their wife's call to the police on July 17 was for the purpose of documenting that there was an incident. The RCMP record is not proof positive that an assault occurred; nor is it proof of a palpable ongoing threat going forward.

Both parties in the hearing provided that this July 17 incident necessitates further company at meetings with the police. While this is not sustainable and otherwise presents a drain on police resources, the need for police presence in and of itself is not evidence of the severity of the incident on July 17. While I find it hard to believe that perceived threats from either side's perspective is evidence of an immediate or severe risk, my consideration in this hearing is limited to what the landlord's presents to be an immediate and severe risk. I simply find that risk is not present.

I find there is no risk to damage to the rental unit because of disconnected gas. Further, I find the tenant has now committed to reconnecting the gas and this should alleviate the concern of the landlord on this. Similarly, at this point the issue of yard maintenance has come to the forefront of discussion, and with it being a condition in place in the written agreement between the parties, the tenant must now realize its importance in fulfilling what the landlord deems to be an important part of the agreement. I find the tenant implied their acknowledgement of this in the hearing.

As per s. 56, I must be satisfied of the two criteria present, listed above. I am not satisfied that the tenant has done any of the actions listed in subs. (a) (i) through (v); therefore, I am not obligated to consider whether it is unreasonable of unfair for the landlord to wait for the other means of ending the tenancy with cause.

My reason for this is there is insufficient evidence that there is an immediate danger to the health, safety or security of the landlord. The evidence shows verbal confrontation and words spoken. The evidence does not show immediate threats uttered by the tenants, and there is insufficient evidence to show an actual physical assault.

In conclusion, I find the tenant's behaviour does not rise to a level that is sufficient to end the tenancy in this manner. An expedited hearing process is for circumstances where there is an <u>imminent</u> danger to the health, safety, or security of a landlord or tenant. This method of ending the tenancy is for <u>serious</u> and <u>immediate</u> risk of danger; I do not find that to be present in this case. I find that the evidence and oral testimony presented by the landlord does not show this to be the case.

I find the landlord has not proven there is reason to apply for an order that ends the tenancy early by application of s. 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a s. 47 notice to end tenancy.

Because they were not successful in this matter, I make no award for reimbursement of the Application filing fee.

Conclusion

I find the landlord's evidence does not show the tenant's actions are an immediate and severe risk to the property or the landlord. This Application for an early end of tenancy and an order of possession for the rental unit is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 2, 2021

Residential Tenancy Branch