



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prospero International Realty
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was scheduled to deal 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 the landlord's agents and the tenant appeared for the hearing. The tenant was assisted by an Advocate. The parties were affirmed and the parties were ordered to not record the proceeding. I confirmed the parties had exchanged their respective hearing documents with each other. Although the tenant's submissions were served late, the landlord's agent confirmed she had sufficient time to review and prepare a response to the tenant's submissions and had no objection to their admittance. Accordingly, I have admitted the evidence of both parties and considered it making this decision.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and be provided an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy started on October 1, 1998 and the tenant is currently required to pay rent of \$920.00 on the first day of every month. The rental unit is described as being an apartment style unit in an apartment building managed by the landlord.

The landlord's application revolves around an incident that occurred on September 6, 2021. Below, I have summarized the parties' respective positions.

Landlord's position

In the evening of September 6, 2021, the police asked the resident manager to permit them access to the building. Several police officers entered and approached the rental unit, including one officer who went on the balcony of the unit next to the tenant's unit.

The landlord provided an email of the tenant residing next door to the tenant who described how a police officer went on their deck for about 10 minutes before leaving their unit and telling the occupants to shelter in place. This witness also described hearing the police speak to the tenant on a speakerphone before hearing a bang and the tenant yelling that he had been shot before he was taken away by police.

In another email from another nearby tenant, this witness described hearing what appeared to be agitated speaking coming from the tenant's unit on what may have been a crisis line. After police arrived this witness heard the tenant shouting "Shoot me, kill me you fucking bastards".

The resident manager testified that when the tenant came out into the hallway, he was shot with a rubber bullet(s) by police before being handcuffed and taken away. The tenant was released and returned to the property the following day.

The landlord submitted that in September 2020 the tenant was also taken away by police and alluded to other occasions where the tenant was taken away by police but the landlord did not provide specific dates. The landlord's agent believes the tenant has a drinking problem which contributes to the calls for police.

On September 10, 2021 the landlord posted a One Month Notice to End Tenancy for Cause ("1 Month Notice") on the tenant's door. The landlord and the tenant provided copies of the 1 Month Notice served on September 10, 2021.

The 1 Month Notice was accompanied by a letter dated September 8, 2021. In the letter the landlord reproduces portions of section 47 of the Act and states that as a result of the tenant's behaviour on September 6, 2021 it is issuing the 1 Month Notice to the tenant.

The landlord's agent stated that she checked with the Residential Tenancy Branch in an effort to determine if the tenant had filed to dispute the 1 Month Notice. The landlord's agent submitted that she was informed that the tenant had not so on September 29,

2021 the landlord made this Application for Dispute Resolution. The landlord explained that in applying for an Order of Possession, the online application asks if the situation is urgent and when the landlord indicated it was the application was made under section 56 of the Act. The landlord maintains that the situation is urgent because the safety of its other tenants is paramount, especially that of a 2 year old child living next door to the tenant. The police officer's use of bullets, whether they be real or rubber, posed a risk of harm to its other occupants. Further, this is not the first time the tenant has been taken away by police and if this were to recur the safety of its other tenants would be put in jeopardy again.

Tenant's position

The tenant testified that he was suffering from a depressive episode on September 6, 2021 and he had called a crisis line. During that phone call he hung up and then the police arrived at the building. The tenant suspects the nurse he was speaking to on the crisis line must have called the police. The tenant stated that several police officers arrived and he was yelling because he did not know "who is who" but he denied saying "kill me, shoot me". The tenant eventually went into the common hallway where he was speaking with one of the police officers. The tenant did not want to be taken to the hospital and when he turned to return to his apartment with the police officer he was speaking to, a different police officer shot him with a rubber bullet. The tenant does not know why he was shot since he was empty handed and he claims he was not acting aggressively. The tenant was then handcuffed and led down to the police car. There the handcuffs were taken off and he was transported to the hospital. He was at the hospital over night and released the next morning without any charges. The tenant stated he had been drinking but he was not drunk.

The tenant stated he is aware that there is a child living next door but he did not expect to be shot either. The tenant described how he had called the crisis line the year prior and he was taken to the hospital without incident.

Three or four days later he received the 1 Month Notice along with the letter dated September 8, 2021 that refers to section 47 of the Act.

On October 6, 2021 the landlord issued another letter to the tenant, along with the landlord's Application for Dispute Resolution, advising the tenant that they have not received notification that the tenant disputed the 1 Month Notice and that they expect he will be vacating the rental unit by the effective date of the 1 Month Notice or they will be pursuing an Order of Possession.

The tenant did file to dispute the 1 Month Notice on September 27, 2021 but it was not processed by the Residential Tenancy Branch until October 12, 2021 and the hearing is set for February 1, 2021 (file number referenced on cover page of this decision).

The tenant's advocate argued that the landlord's response to the incident was to issue a 1 Month Notice. The landlord then waited to see if the tenant would dispute the 1 Month Notice and in serving the tenant with the letter of October 6, 2021 the landlord again pointed to the 1 Month Notice and the tenant's obligation to either dispute the 1 Month Notice or vacate by the effective date. The tenant's Advocate was of the position that the landlord has acted in a manner consistent with ending the tenancy by way of a 1 Month Notice and since the 1 Month Notice and this Application for Dispute Resolution pertain to the same issue, the matter should be heard on February 1, 2021.

The tenant provided a copy of the landlord's letter dated September 8, 2021 and October 6, 2021.

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 One 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.

[My emphasis underlined]

Section 47 of the Act provides a mechanism for landlords to bring a tenancy to an end where the tenant has given the landlord cause to end the tenancy. A notice given under section 47 affords the tenant ten days to dispute the 1 Month Notice or at least one full month to vacate the rental unit. Section 56 of the Act also requires that the tenant has given the landlord cause to end the tenancy; however, the seriousness of the alleged offence(s) or conduct permits the landlord to have the tenancy ended without having to issue a 1 Month Notice and affording the tenant the time afforded under section 47. Accordingly, section 56 is intended to apply in the most urgent and severe

circumstances and applications made under section 56 are processed as an “expedited hearing”.

As provided under Residential Tenancy Policy Guideline 51: *Expedited Hearings*, expedited hearings are reserved for “... circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant...” The expedited process available for applications made under section 56 of the Act is not intended to permit “queue jumping” and to permit such would undermine the availability of hearings for truly emergency situations.

In the matter before me, the tenant may have given the landlord cause to end the tenancy by way of what transpired on September 6, 2021; however, in order for the landlord to succeed in this application, I must be satisfied that the circumstances are so urgent and severe that it is unreasonable for a 1 Month Notice to take effect.

The landlord had served the tenant with a 1 Month Notice following the incident of September 6, 2021. I am of the view that in itself is not a fatal flaw and that an application under section 56 may still be made. However, the landlord did not apply for an Order of Possession under section 56 until September 29, 2021 which is more than 3 weeks after the incident and only after making enquiries to determine if the tenant had filed to dispute the 1 Month Notice. Also of consideration is that in its correspondence with the tenant, by way of the letter dated September 8, 2021 and October 6, 2021, the landlord refers to the tenancy ending under section 47 of the Act by way of a 1 Month Notice. Accordingly, I find the landlord’s conduct is consistent with seeking to end the tenancy by way of a 1 Month Notice under section 47 of the Act; and, I am of the view that if the landlord considered the incident of September 6, 2021 to be so severe and urgent it would not have delayed 23 days before filing an Application for Dispute Resolution under section 56 and would have proceeded to file such an application much sooner.

I did not hear any evidence to suggest that the tenant’s conduct has deteriorated since the September 6, 2021 incident or recurred. As such, I do not see that a more emergent situation has arisen since the landlord issued the 1 Month Notice.

For the reasons provided above, I deny the landlord’s application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act. Accordingly, it is expected that the parties shall deal with the disputed 1 Month Notice at the hearing currently scheduled for February 1, 2021 unless the tenancy otherwise comes to an end before that date. To be clear, I have not made a finding as to whether

the landlord has cause to end the tenancy and that remains a matter for the Arbitrator presiding over the February 1, 2021 hearing to determine.

Conclusion

The landlord's application for an order to end the tenancy and obtain an Order of Possession under section 56 of the Act 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: October 20, 2021

Residential Tenancy Branch