



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET FFL

Introduction

In this application the landlord seeks an order ending the tenancy early, pursuant to section 56 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to recover the cost of the filing fee pursuant to section 72 of the Act.

A dispute resolution (arbitration) hearing was held on October 5, 2021 at 9:30 AM. Attending were two agents representing the landlord (who did not attend the hearing), a witness for the landlord, and the tenant (L.D.). The tenant (A.M.) did not attend.

No service issues were raised, all of the parties were affirmed, and Rule 6.11 (recording of hearings prohibited) of the *Rules of Procedure* was explained.

Issues

1. Is the landlord entitled to an order under section 56 of the Act?
2. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on March 14, 2021. Monthly rent is \$1,375.00 and the tenants paid a security deposit of \$750.00. A copy of the written *Residential Tenancy Agreement* was in evidence. The tenants reside in and occupy the basement suite, and the landlord and her son occupy the upstairs portion of the residential property.

The landlords' agents (hereafter "agent") gave evidence the reason the landlord filed an application for an order under section 56 of the Act is primarily because of an assault that occurred on August 11, 2021 at approximately 2:35 PM.

According to the agent, the tenant (A.M.) physically assaulted the landlord's son. The assault included the tenant punching the son in the face and hitting and throwing weapons (broken pieces of wooden furniture) and garbage at the son.

In addition, the tenant allegedly threatened to hit both the landlord and her son with a hammer. To add to this behavior, the tenant also threw garbage on the landlord's head. The police were called, and the tenant has been charged with one count of assault; he has a no contact order and a court appearance on October 21, 2021.

The agents testified about other disturbances and incidents, though the assault is the most egregious of them. The agents argued that the tenant poses a "huge risk" to the landlord and her son, and a risk to any of the family's children who may come to visit. The landlord is currently obtaining counselling from victim services and is on medications and antidepressants to help her cope. In fact, the agent (A.C.) testified, her mother "is [or was] on the verge of committing suicide."

The landlord's witness briefly testified about some rather unfortunate interactions between the tenant and her children, including the tenant calling the children names and threatening the family. The tenant allegedly "made the kids cry."

The tenant testified that the families got along okay after the tenancy started. However, the tenants' children and the landlord's family's children soon had some unfortunate interactions, including the tenant's 4-year-old daughter throwing a mask at the son of agent A.C. A.C. then apparently came down the stairs and started berating the 4-year-old which caused the tenant A.M. to become upset.

There were then a series of actions taken by the landlord in response to this incident, including the severing of internet, parking, and laundry services, which are supposed to be provided under the tenancy agreement. The tenant spoke about the landlord's "constant harassment and noise."

In respect of the August incident, the tenant summarized her version of what occurred. The gist of the tenant's version was that it was the landlord's son who instigated the incident leading to the assault. The tenant stressed and reiterated that none of the other alleged incidents were instigated by either her or the tenant A.M.

Nor, she added, have the tenants ever sworn at anyone. Indeed, the tenant argued that the landlord's application is simply the next step in what the tenant describes as a "self-help eviction" to get the tenants out.

Both parties provided brief rebuttals, adding additional information and clarification on matters spoken to during their testimonies in chief.

The parties, in particular the landlord, submitted a substantial amount of documentary evidence, including several photographs and copies of information regarding the various incidents, and including those related to the assault of August 11, 2021.

Analysis

Application for order ending tenancy early

Section 56 (1) of the Act permits a landlord to 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, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56(1) of the Act, I must be satisfied by the evidence, on a balance of probabilities, that

- (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.

In this case, there is no dispute that the tenant A.M. assaulted the landlord's son. However, even if the landlord's son instigated the incident, the tenant's response is wholly disproportionate to being pushed on the arm, if that is what occurred.

The tenant's assault, consisting of punching the son in the face, throwing garbage at the landlord, arming himself with a weapon, and grabbing a hammer to threaten the landlord and her son, is, I find, an illegal activity that has clearly adversely affected the quiet enjoyment, security, safety, and physical well-being of both the landlord and her son, who is another occupant of the residential property. As such, the evidence persuades me to find, on a balance of probabilities, that tenant engaged in an act which satisfies subsection 56(1)(a)(iv)(B) of the Act.

Moreover, based on the egregious and extreme nature of the incident, including the ongoing apparent breaches of a no contact order, it would in my mind be unreasonable and unfair to the landlord and the other occupant (her son) of the residential property to have to wait for a notice to end the tenancy under section 47 of the Act.

In summary, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order under section 56 of the Act.

Given the above, it is hereby ordered that the tenancy is ended effective immediately, and the landlord is granted an order of possession of the rental unit. A copy of the order of possession is issued in conjunction with this decision, to the landlord. The landlord, or an agent for the landlord, must serve one copy of the order of possession on each of the tenants.

Claim for Payment of Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in her application, I award her \$100.00 to cover the cost of the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy is ordered ended, I authorize the landlord to retain \$100.00 of the tenants’ security deposit in full satisfaction of the above-noted award.

Conclusion

The landlord’s application for an order ending the tenancy early is granted.

The tenancy is hereby ordered ended effective immediately, pursuant to section 56(1)(a) of the Act, and the landlord is granted an order of possession of the rental unit pursuant to section 56(1)(b) of the Act.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 5, 2021

Residential Tenancy Branch