



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 the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An early termination of a tenancy pursuant to section 56; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings and stated she had the opportunity to review it. The tenant stated she was in the hospital when the Application for Dispute Resolution was served, however the tenant did not provide dates or documentation to support this statement. I am satisfied the tenant was served with the Notice of Dispute Resolution Proceedings in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue

The tenant's name was misspelled in the landlord's application. In accordance with rules 4.2 and 6.1 of the Residential Tenancy Branch Rules of Procedure, I amended the tenant's surname. The tenant's correct name is reflected on the cover page of this decision.

Issue(s) to be Decided

There are (3) issues before me to be decided.

First, has the landlord provided sufficient evidence to show the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at 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?

Second, would it 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?

Third, is the landlord entitled to recover the filing fee?

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The parties agree on the following facts. The rental unit is one of three units located above a commercial property, owned by the landlord. The tenant and another occupant of the building share a common entrance and lobby; the third occupant has his own entrance.

The tenancy began on April 1, 2020 with rent set at \$550.00 per month payable on the first day of each month. A copy of the tenancy agreement was provided as evidence by the landlord.

The landlord testified that on August 31, 2021, she personally served the tenant with a One Month Notice to End Tenancy for Cause. A copy of the notice was provided as evidence by the landlord. The tenant disputes the service date, saying it was received on September 4th.

The landlord testified that on September 2, 2021, she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenant's door. The tenant acknowledged receiving it on that day. The landlord testified that on September 6th, the tenant called the landlord to come retrieve the rent. When the landlord went to collect it, the tenant yelled at her and insulted her by calling her names. The landlord testified that the tenant alleges that the landlord owes the tenant the equivalent of 4 months rent. The landlord testified that she ignored the insults and instead called the police. The landlord testified that the tenant did not pay the outstanding arrears as shown in the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and that the tenant has likewise not paid any rent for October, 2021.

On September 9th, another occupant of the building called the landlord and told the landlord that she is afraid of the tenant and fears living under the same roof as the tenant. A written letter from that occupant was provided as evidence by the landlord however that occupant was not called to provide testimony. The letter alleges that the tenant pounded on her door, yelled and screamed at her and threatened to kill her.

The landlord called TM, a neighbour living in an adjacent building to provide testimony. TM testified that the tenant has kept her up for 3 straight days and has woken her up at 4:00 in the morning. No dates of these incidents were provided. The witness further testified that the tenant has called her names, accused the witness of pedophilia and that the tenant is a nuisance who causes problems for the neighbourhood.

The landlord alleges that on August 18th, the tenant called the police and when the police came to investigate, the tenant refused to let them in. The landlord testified the police had to break down the tenant's door to access the unit on August 18th.

On August 29th, the landlord's husband/co-landlord was working outside the building and a man in a blue pickup truck went into the building to help fix the door. The landlord/husband told the man and the tenant not to fix the door as it requires a replacement. The landlord testified that the tenant and her guest became verbally abusive with the landlord/husband.

On September 21st, the police contacted the landlord asking for keys to the tenant's unit. According to the landlord, the tenant put up a new door without the landlord's permission and didn't supply the landlord with keys. The police required access to the unit and had to break down the second door.

The tenant provided testimony; however, I found much of this testimony to be rambling, disjointed and incoherent. As a result, I found it difficult to obtain clear and relevant evidence related to the issues before me. The tenant testified that there is a conspiracy involving the landlords, the police and the community at large. The tenant alluded to a pedophilia ring and drug dealing. The tenant alleges the occupants of one of the units in her building is a drug dealer and emphasizes that she is not a tenant on a tenancy agreement. The tenant made vague references to murder plots and corrupt police officers but did not elaborate on how this related to an early end to her tenancy. The tenant also indicates she pays to heat the lobby. The tenant concluded her statements by saying she is the victim of ritual abuse and has been previously abused by various people in the past. The tenant did not provide any documents to support these allegations.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, I **need to be satisfied that the tenant has done any of the following:**

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

it would be unreasonable, or unfair to the landlord, the tenant 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*Applications to end a tenancy early are for **very serious breaches only and require sufficient supporting evidence**. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).*

The landlord called a witness who testified that she is a neighbour to the tenant; not an occupant of the building where the tenant lives. Disturbing a neighbour is not one of the standard reasons for ending a tenancy early under section 56 of the Act. In order for me to grant the early end to tenancy, I must be satisfied that the health, safety or security of **another occupant or the landlord** is in serious jeopardy. Based on the witness' testimony, I cannot conclude there is such a danger to any of those people.

Although the landlord has served the tenant with a One Month Notice, the landlord has not filed an application for dispute resolution seeking an Order of Possession based on this Notice. The landlord testified she has not taken any steps to follow through on the Notice she served. Once again, in order to succeed in an application for an Early End to Tenancy, the landlord must satisfy me that it would be unreasonable to wait for the One Month Notice to take effect. I must be satisfied there is an imminent danger to the landlord, the other occupants or the landlord's property. I find I have not been provided

with sufficient evidence to show it would be unreasonable to wait for the One Month Notice to take effect.

There are no incidents of a serious breach to the tenancy agreement such as actual violence caused by the tenant or her guests. A statement from the occupant of another unit was provided as evidence indicating that the occupant was threatened and harassed by the tenant. The landlord did not call this person to provide testimony. As a result, neither the tenant nor I had the opportunity to examine the veracity of the occupant's statement or evaluate the extent of the alleged harassment. There is insufficient evidence to satisfy me the tenant would follow through on any of the perceived threats to the occupant or the landlord. As stated earlier, I must be satisfied there is an imminent danger to their safety or security. Based on the landlord's evidence I do not find this is the case.

The landlord alleges the tenant's refusal to open doors for the police resulted in significant damage to the doors. While it could be argued that this qualifies as extraordinary damage to the landlord's property, I do not believe it poses an imminent threat to the building. While the actions of the tenant may be sufficient for ending the tenancy by means of a One Month Notice to End Tenancy for Cause, they are not sufficiently adequate to justify an early end to the tenancy without waiting for the one month to pass.

Given the evidence before me, I am not satisfied there is an imminent danger to the health, safety, or security of a landlord or tenant that would cause me to end the tenancy early pursuant to section 56 of the *Act*. Accordingly, the landlord's application is dismissed.

As the landlord's application was not successful, the landlord is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The application for an early end to tenancy is dismissed without leave to reapply.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

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 19, 2021