



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

The hearing was convened as a result of the Landlords' application under the *Residential Tenancy Act* (the "Act") for:

- an early termination of the tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both Landlords and the Tenant attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlords testified that the Notice of Dispute Resolution Hearing and Landlords' evidence ("NOH Package") was served by posting it on the Tenant's door on September 17, 2021. The Tenant confirmed that he received the NOH Package on September 17, 2021. I find that the Tenant was served with the NOH Package in accordance with sections 88 and 89 of the Act.

The Tenant stated that he had not served any evidence on the Landlords.

Preliminary Matter – Address of Rental Unit:

During the hearing, it became apparent that there are two basement suites in the residential premises. The Landlords identified the rental unit occupied by the Tenant by number and the Tenant confirmed the unit number of the rental unit. The Landlords requested an amendment to their application to identify the Tenant's unit number.

Residential Tenancy Branch Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

As the Tenant was agreeable to the clarification of the rental unit in which he resides, I amended Landlords' application to include the number for the rental unit.

Issue(s) to be Decided

Are the Landlords entitled to:

- an early termination of tenancy and Order of Possession?
- entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The tenancy commenced on November 1, 2020 on month-to-month basis with rent of \$1,200.00 payable monthly on the 1st of each month. The Landlords stated that the Tenant's girlfriend moved in and that the Landlord and Tenant agreed to enter into a new tenancy agreement effective December 1, 2020 on a month-to-month basis with rent of \$1,300.00 payable monthly on the 1st of each month. The Landlords stated they had collected a security deposit of \$600.00 and they confirmed they were still holding the deposit.

The Landlords testified that they live on the upper floor of the residential premises.

They stated that on or about August 31, 2021 the police rang their doorbell and inquired about a motor vehicle (the "Truck") that was parked on the residential property. They were informed that the Truck had been stolen and that the Tenant and a third party were on the scene when they arrived at the residential property. They stated that they were informed the Tenant and a third party had broken into the Truck using a crowbar. The Landlords testified that the Tenant and the third party were arrested and taken away by the police. The Landlords testified that they were advised by the police that the Tenant had a criminal record and that they should consider evicting the Tenant. The Landlords stated that the police recommended they contact the Residential Tenancy Branch to obtain information on the procedures required for this.

The Landlords submitted a witness statement dated September 7, 2021 from a neighbour who lives in the house located next to the stolen truck to corroborate their testimony. In the witness statement, the witness states they "saw the tenant and an accomplice breaking into a van parked in [Landlords'] driveway" and that the "[witness] called the police].

The Landlords testified there had been other issues with the Tenant. The Landlords stated they and the neighbours saw many persons coming and going from the Tenant's rental unit and suspected that illegal activities were occurring during these visits. The Landlords did not provide any proof of what those activities might be.

The Landlords also testified they and their children had been disturbed, sometimes late at night, by the Tenant banging doors and playing loud music. The Landlords also stated that the Tenant disturbed them and their neighbours by working on his car late at night.

The Landlords stated they believed that the Tenant was involved in mail fraud as letters would arrive at the residential premises that were addressed to a person other than the Tenant. The Landlords testified that, when they made inquiries of the Tenant as to the identity of the addressee and didn't receive an adequate explanation, the Tenant nevertheless demanded they give those letters to him.

The Landlords further testified that there was another incident, other than the one involving the stolen Truck, when the police attended at the Tenant's rental unit. The Landlords were unable to provide any details of the reason for the police attending at the rental unit on that other occasion.

The Tenant stated that his relationship with the Landlords was amicable at first. He stated that he had built a gazebo in the back yard. However, that relationship deteriorated, and the Landlords served him with a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities and One Month Notices to End Tenancy for Cause. He stated that he has disputed those two notices to end his tenancy with the Residential Tenancy Branch and they are scheduled to be heard in January 2022.

The Tenant admitted there was an incident involving a break-in of the Truck as stated by the Landlords in their testimony. The Tenant testified a friend of his had arrived at the residential property while he was out. The Tenant stated that when he arrived home, his friend asked if he could help him get into the Truck as he required the tools that were in it. The Tenant testified that he got a crowbar and assisted the friend enter the side door of the Truck. The Tenant stated that, when the police arrived, his friend acknowledged that he did not own the truck. The Tenant testified he was arrested by police at the time of the incident and was later released on his own recognizance pending a hearing in December. He stated that the assistance he provided to his friend break into the Truck was inadvertent as he did not know the Truck had been stolen by his friend.

The Tenant also testified that the mail that was received at the residential premises was addressed to his girlfriend's grandmother. He states that confusion may have arisen with the Landlords in respect of the identity of the addressee of that mail as his girlfriend's grandmother has died since the mail first started arriving at the residential property.

The Tenant further testified that he is an insomniac. He stated that it is common for him to be awake at nighttime listening to music and working on his car.

The Tenant testified that the police attended at his rental unit on one other occasion in January 2021. He stated that the police came to speak to his girlfriend in connection with threats that had been made on her by her ex-boyfriend.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is the Landlords to establish on a balance of probabilities that they are entitled to an order for an early end of the tenancy.

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 ("RTBPG") Number 51 [Expedited Hearings] provides guidance on a landlord's application for dispute resolution to seek for an early end of tenancy pursuant to section 56 of the *Act*. The following excerpts of that Policy are relevant to the Landlords' application:

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

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 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).

RTBPG Number 32 [Illegal Activities] provides guidance on the meaning of “illegal” and what may constitute an “illegal activity”. Excerpts from that Policy are:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other

occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

If a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity. The tenant may be found responsible for the illegal activity whether or not the tenant was actually present when the activity occurred, so long as it was in the rental unit or on the residential property. For example, the tenant may know that his or her guest has been arrested for breaking and entering. The guest breaks into the rental unit of another tenant. This may constitute grounds for ending the tenancy for illegal activity. A further example may be where a tenant allows a teenage child of the tenant to have a party in the rental unit or on the residential property while the tenant is away and one of the party guests commits an illegal act in circumstances where supervision would be found to be warranted and where the tenant knew or ought to have known that such an illegal act could occur in the circumstances (underage drinking, use of drugs, presence of a weapon).

The test of knowledge attributable to the tenant is the "reasonable

person" test. If a reasonable person would be expected to know or ought to know that illegal activity might occur, the tenant will be responsible whether or not the tenant actually possessed this knowledge. In other words, willful or inadvertent blindness to the possibility will not save the tenant from the consequences of the guest's illegal activity.

The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities.

[emphasis added]

Although the Tenant testified he did not know that the Truck was stolen at the time he assisted his friend to break into the Truck on the residential property, I find his wilful or inadvertent blindness to the possibility that an illegal activity might occur does not save him from the consequences of his guest's illegal activity. Therefore, I find that the Tenant has engaged in an "illegal activity" as that phrase is used in section 56.

However, even though I find the Tenant engaged in an "illegal activity" as that expression is used in section 56 of the Act, I do not find that the Tenant's illegal activity has placed the Landlords' property at significant risk or has seriously jeopardized the health or safety or a lawful right or interests of the Landlords or another occupant. While the Landlords may have cause to evict the Tenant, the issues before me are to determine if this tenancy needs to end now. I find the Landlords have not satisfied the requirements of section 56(2)(a)(iv) of the Act. Furthermore, the Landlords have not provided sufficient evidence to prove that it would be unreasonable, or unfair to the Landlords or other occupants of the residential property, to wait for a notice to end the tenancy for cause under section 47 to take effect as required by section 56(2)(b) of the Act.

I find the Landlords have failed to provide sufficient evidence, regarding the other incidents to which they have testified, to satisfy any of the reasons set out in section 56(2)(a) of the Act for ending the tenancy. The Landlords could have provided particulars of the events including details of the times, dates and

descriptions including police file numbers.

Based on the foregoing, I dismiss the Landlords' application without leave to reapply.

As the Landlords have been unsuccessful in their application, I decline to order that the Tenant repay the filing fee to the Landlords.

Conclusion

I dismiss the Landlords' application in its entirety, without leave to reapply. The tenancy continues until ended in accordance with the Act.

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 14, 2021

Residential Tenancy Branch