



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an early end to this tenancy and an order of possession pursuant to section 56.

The landlord, B.S. and the tenant attended the hearing via conference call and provided testimony. The landlord, J.L. did not attend and was not represented.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Extensive discussions over a 35 minute period regarding the tenant's fitness to participate in the hearing were made. The tenant frequently stated that he did not understand what was going on even after multiple attempts were made to explain the details of the landlord's application for an early end to the tenancy. The landlord stated that this was an assisted living facility and that the tenant was under the care of a Doctor and had the assistance of a social worker. Neither were present. The tenant would state at one point he understood what an eviction was and later state that he did not understand. Numerous attempts at explaining the landlord's application were made. The landlord was asked if he knew the status of the tenant's fitness to participate in the hearing. Further discussions resulted in the landlord stating that the tenant does not have any fitness issues and could participate in the dispute hearing unless he had been drinking. The landlord stated that while the tenant could be difficult, normally he could comprehend and understand. The tenant confirmed in his direct testimony that he understood that the landlord was trying to "evict" him but did not agree. The tenant

stated that he did not read or write and could not understand the landlord's hearing package information. The tenant requested assistance. The tenant's request for assistance was addressed in that the tenant was notified that he needed to obtain assistance prior to a hearing if he deemed it necessary. The tenant stated that he did need help but did not seek any assistance for the hearing. The tenant later understood what was going on but did not agree with the landlord. I find on this basis that the tenant was fit to participate based upon the discussions that took place regarding the landlord's application. The tenant was advised that any reference to documentary evidence by the landlord would be described in detail to the tenant and the tenant given an opportunity to respond.

Both parties confirmed the landlord served the tenant with the notice of hearing package by posting it to the tenant's rental unit door on November 12, 2021. The landlord stated that the submitted documentary evidence was included in the hearing package. The tenant stated that he did not know but noted that the package contained several pages. The tenant confirmed that no documentary evidence was submitted by him. On this basis, I find that both parties have been sufficiently served as per section 71 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an early end to the tenancy and an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlords seek an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord.

The landlords provided written details which states,

Resident has threatened/ assaulted multiple other residents in the building.

The landlord stated that a tenant in unit #713 was assaulted by the tenant on November 8, 2021. The landlord was unable to provide any specific details of the assault only stating that he was in possession of a police statement by the victim. The landlord was unable to identify any submitted documentary evidence regarding this statement. The landlord described that the tenant was "logged" as entering the victim's unit and then

later exiting. The landlord stated that the victim was “logged” as exiting the unit bleeding. The landlord stated that the police were called, but that no action was taken as the victim refused to file a complaint or make a statement. The landlord stated that the victim later provided a statement to the police.

The tenant argued that no assault took place and that he had suffered injuries from the altercation from the tenant in unit #713. The tenant claims that he was attacked by the other tenant.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord’s application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord’s property in 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;
- caused extraordinary damage to the residential property.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be “unreasonable or unfair” to wait for a cause notice to take effect.

In this case, I find that the landlord has failed to provide sufficient evidence that an assault took place by the tenant against another tenant. The landlord stated that he

was in possession of a police statement signed by the victim detailing the assault but was unable to identify it in any of the submitted documentary evidence or if it had been submitted. The tenant argued that no assault took place and that he in fact was injured by the other tenant. I find on this basis the landlord has failed to provide sufficient evidence to support an early end to the tenancy. The landlord's evidence is unclear if an assault had taken place. In this case disputed testimony.

Conclusion

The landlord's application is dismissed with leave to reapply.
Leave to reapply is not an extension of any applicable limitation period.

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: November 26, 2021

Residential Tenancy Branch