



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 an Application for Dispute Resolution (the Application) that was filed by the Landlord under the *Residential Tenancy Act* (the *Act*) on November 4, 2021, seeking:

- An early end to the tenancy under section 56 of the *Act*; and
- Recovery of the \$100.00 filing fee.

The hearing was originally convened by telephone conference call on November 25, 2021, at 9:30 AM and was attended by Landlord's agent I.B., the Landlord's witness C.J., the Tenant D.V., the Tenant's witness and support person J.O., and two agents for the Tenant from a legal advocacy clinic, G.S. and R.N. All testimony provided was affirmed. The hearing was subsequently adjourned due to the time constraints of the hearing, as not all parties were able to provide their evidence and testimony for consideration or call witnesses in the time allotted, despite the fact that I had already extended the duration of the hearing by 31 minutes. The reconvened hearing was set for the following day, November 26, 2021, at 9:30 AM, by mutual consent of the parties and due to the short turn around time, the parties were provided with the reconvened hearing information, including the date and time of the hearing, the hearing teleconference phone number, and the hearing participant code, before the conclusion of the first hearing. The parties were also advised that no new evidence would be permitted at the reconvened hearing, that the Landlord was prohibited from amending their Application, and that the Tenant was prohibited from filing a cross-Application, during the adjournment period. As a result, no interim decision was rendered in writing. However, a copy of the new Notice of Hearing was distributed to the parties by the Residential Tenancy Branch (the Branch).

The hearing was reconvened by telephone conference call on November 26, 2021, at 9:30 AM and was attended by Landlord's agent I.B., the Landlord's witness C.J., C.J.'s support person D.R., the Tenant D.V., the Tenant's witness and support person J.O.,

another witness for the Tenant D.D., and two agents for the Tenant from a legal advocacy clinic, G.S. and R.N. All testimony provided was affirmed.

At both hearings the parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing. The parties were advised at both hearings that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. At the initial hearing the Tenant acknowledge receipt of the Application and the Notice of Hearing and neither the Tenant nor their agents raised any concerns with regards to the date or method of service. As a result, I find that the Tenant was sufficiently served by the Landlord in accordance with the *Act* and the Rules of Procedure. The parties also agreed that they had exchanged the documentary evidence before me for consideration with each other in accordance with the *Act* and the Rules of Procedure, so I accepted the documentary evidence before me for consideration and have relied upon it in rendering this decision.

Although I have reviewed all evidence and testimony before me, While I have reviewed and considered the documentary evidence and the testimony before me, not all details of the submissions and arguments are reproduced here. Only the relevant, determinative, and important aspects of the claims and my findings are set out below.

Preliminary Matters

Preliminary Matter #1

Witnesses were excluded from the proceeding except when called upon to provide evidence and testimony or answer questions under cross-examination. As the witness for the Tenant J.O. was also the Tenant's support person, and therefore needed to be present for the duration of the hearings, I had J.O. provide testimony at the outset of the

initial hearing and prior to hearing any evidence or testimony from the Landlord, Tenant, or any other witnesses.

Preliminary Matter #2

The Tenant's agent R.N. objected to the presence of the Landlord's witness C.J. at the hearing, as they had no prior notice that C.J. would be called as a witness, and therefore referred to the presence of this witness at the hearing as a "trial by fire".

I advised the parties that the Rules of Procedure do not require that the parties disclose in advance the names of the witnesses to be called at the hearing, and reminded the parties that pursuant to section 75 of the *Act*, the rules of evidence do not apply. I also pointed out that the Tenant and their Agents did not appear to have disclosed in advance the names of the witnesses that they themselves had brought to the hearing and/or planned to call upon.

Finally, I advised the parties that pursuant to section 75 of the *Act*, I have the discretion to admit as evidence, whether or not it would be admissible under the laws of evidence, any oral testimony that I consider to be necessary, appropriate, and relevant to the dispute resolution proceedings. As the witness C.J. was reportedly present during the incident which gave rise to the Landlord's Application seeking an early end to the tenancy, I found that their oral testimony was likely to be necessary, appropriate, and relevant to the dispute resolution proceedings. As a result, I allowed their attendance for the purpose of providing witness testimony. I explained to the parties that the Tenant and their Agents would be able to cross-examine the witness. I was also cognizant of the sensitive and potentially traumatic nature of the incident, and asked the Tenant and the witness if there was anything I could do to assist them in feeling comfortable in providing their evidence and testimony, allowed for brief breaks when necessary during testimony, and allowed the Tenant and the witness C.J. to have their support persons present with them.

Preliminary Matter #3

During the reconvened hearing, the Tenant's agent R.N. requested that they be allowed to submit a written version of the oral submissions and arguments they planned to make at the hearing, as they thought this had been submitted in advance, but I could not locate it in the documents and evidence before me. The Landlord's agent I.B. objected as they had not received a copy.

As parties are entitled at the hearing to make any arguments and submissions they feel are relevant, I find that a written copy of these submissions is not needed in advance and that such a document does not constitute documentary evidence for the purposes of the *Act* and the Rules of Procedure. As a result, I find that a written copy of oral submissions and arguments are not subject to the strict service requirements and timelines set out in the Rules of Procedure. I therefore allowed R.N. to upload a copy for my review, which they read verbatim during the hearing as I followed along.

Issue(s) to be Decided

Is the Landlord entitled to an early end to the tenancy and an Order of Possession for the rental unit pursuant to section 56 of the *Act*?

Is the Landlord entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy commenced on May 1, 2012, in a rent-geared-to-income building. It states that the economic rent at the time the tenancy commenced was \$670.00, and that the Tenant's rent contribution towards this amount was set at \$467.00. The tenancy agreement states that a security deposit in the amount of \$335.00 was required. At the hearing, the parties raised no concerns with regards to these terms.

The Landlord sought to end the tenancy early under section 56(2)(a)(i) and 56(2)(a)(ii) based primarily on an incident that took place on November 1, 2021. Although the parties disputed some of the details regarding the incident, and what precipitated and followed it, the following facts were agreed upon:

- On November 1, 2021, a man later identified as C.J.'s babysitter (the babysitter), was throwing pebbles at the window of C.J.'s rental unit, which is directly below the Tenant's rental unit;
- The Tenant shouted at the babysitter from their balcony as a result of the pebble throwing;
- C.J. and the babysitter went to the Tenant's rental unit once the babysitter was granted access to the building by C.J.;
- A verbal altercation occurred between them;
- At some point during the interaction the Tenant threatened to harm the babysitter;

- The Tenant had in their possession during at least a portion of the interaction, what appeared to be a firearm and was later identified as an unloaded air javelin without the necessary CO2 for firing;
- The air javelin was ceased by police the following day and it was confirmed that the Tenant had neither arrows nor CO2 for the air javelin in the rental unit;
- No charges were pursued against the Tenant;
- The Tenant attempted, with the help of J.O., to resolve the conflict with C.J. after the incident; and
- Unbeknownst to the Landlord at the time of the incident, buzzers at the building were not functioning properly.

A great deal of testimony was provided by the parties and their witnesses, and a fair amount of documentary evidence was submitted by the parties for my consideration, including witness statements, character references, videos, copies of emails and letters, photographs, tenancy documents, written submissions, and Dr.'s notes. While I have considered this evidence and the testimony of the parties, their agents, and their witnesses, not all details of the evidence, testimony, submissions, and arguments are reproduced here as I have summarized only the salient testimony and evidence referred to below.

The Landlord's agent I.B. argued that the Tenant significantly interfered with and unreasonably disturbed C.J. and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant when they uttered threats and brandished a weapon appearing to be a firearm, during an interaction at the door of their rental unit with C.J. and the babysitter. As a result, I.B. stated that the Landlord is seeking to end the tenancy early under section 56(2)(a)(i) and 56(2)(a)(ii) of the *Act*.

I.B. submitted a video allegedly taken by C.J. which shows a portion of the incident. In the video the babysitter can be heard saying "are you going to shoot me" to which the Tenant responds "I am. I am buddy". The Tenant can be seen from about the shoulders down, does not appear to leave the rental unit, and appears to be holding some sort of firearm. In the video the Tenant can be heard telling the babysitter not to bug C.J., to which C.J. responds that the babysitter was not bothering them by throwing the pebbles at their window, as the babysitter does not have a phone. The Tenant then offers C.J. a phone card and states that if C.J. is cool with the babysitter, then so are they, that they just want C.J. safe, that the rock throwing makes them nervous, and that they are sick and coming off of morphine. The Tenant then apologizes, and the incident appears to resolve peacefully.

The Landlord's agent I.B. stated that the Tenant has previously been warned about the air javelin, which is the weapon that can be seen in the video, and pointed me to correspondence in the documentary evidence in support of this. I.B. also called C.J. as a witness.

C.J. stated that the incident occurred at approximately 11:20 AM on November 1, 2021. C.J. stated that their babysitter comes over when they have appointments and that as their babysitter does not have a phone and the buzzer does not work, they often do various things to try to get her attention, such as throwing pebbles or a shoe at the window, or flipping their skateboard. C.J. stated that on November 1, 2021, they heard a commotion, specifically the Tenant yelling from their balcony, and saw the Tenant yelling at the babysitter. C.J. stated that they caught the babysitter's attention, motioned for them to meet them at the front door, and went down to let them into the building. C.J. stated that they and the babysitter then when up and knocked on the Tenant's door to "squash the beef" between them. C.J. stated that after the Tenant opened the door, the Tenant told them to wait there, and went back into the rental unit, returning with what appeared to be a firearm.

C.J. stated that the babysitter then asked the Tenant if they were going to shoot them, which is where the video summarized above starts. C.J. stated that they are a trauma survivor, specifically that they have a history with drugs, abuse, and inter-generational trauma as a result of day and residential schools. C.J. stated that they withdrew as a result of this interaction and behaviour from the Tenant which they characterized as dangerous and unpredictable, and that they thought they had previously made it clear to the Tenant that there was no issue with the babysitter. C.J. stated that they have a hard time sleeping now, have purchased security cameras and dash cameras they cannot afford, and park in an alternate location as they are afraid. They also stated that they are experiencing significant barriers to returning to work due to the re-traumatization experienced as a result of this incident, and that they are seeing 2 counsellors now as the incident exacerbated their PTSD.

Both the agent for the Landlord and C.J. stated that as the Tenant has resided in the building long term, they should have known better and could have called the police if they were afraid of C.J. and their babysitter.

The Tenant's agent R.N. stated that as the Landlord did not articulate in the Application which subsections of the *Act* they were seeking to enforce, it was difficult for them and the Tenant to prepare for the hearing. R.N. stated that the Tenant has been a good tenant since their tenancy began in 2011, is panicked about losing their home, as they

have experience homelessness in the past and a loss of housing would jeopardize stability for their daughter. R.N. stated that in the summer of 2021, an unknown man, now identified as the babysitter, began throwing rocks at the building, stumbling outside, yelling incoherently, and walking into traffic, frightening the Tenant, the Tenant's child, and other occupants of the building. R.N. pointed to several statements from other occupants of the building wherein those occupants express the same concerns. R.N. argued that the Tenant poses no immediate or severe risk to the property, other occupants of the building, or the Landlord and was acting in self-defence in response to perceived threat from the babysitter. R.N. summarized the events that occurred on November 1, 2021, as set out above in the agreed upon facts, and as elaborated on below. R.N. stated that the Tenant was both surprised and compliant when police attended the rental unit on November 2, 2021, as they believed the issue with C.J. and the babysitter had been resolved. R.N. pointed out that no charges were filed against the Tenant and asked that I consider the submitted support letter from D.D., a child protection worker who became involved with the Tenant as a result of this incident.

R.N. Argued that the video submitted from the Landlord is incomplete and one sided, and fails to capture the entirety of the interaction, including pounding on the door and threats of violence made by the babysitter to the Tenant prior to the commencement of the video. R.N. argued that the Tenant feared that the door would break when it was pounded upon by the babysitter and/or C.J. and as a result, they panicked and grabbed the air javelin to scare off the intruder. R.N. stated that the air javelin was not armed or loaded with CO2, neither of which were even on the premises, and that the Tenant was experiencing a fight-or-flight response as a result of their history with intimate partner violence. R.N. stated that the Tenant also feared for C.J. and other occupants of the building, many of whom have also suffered from intimate partner violence in the past, and was worried that C.J. was not in fact fine with the presence of the babysitter, or safe, as women who have suffered intimate partner violence often cannot or will not identify when they are terrified or in danger from a partner. R.N. stated that as an additional contributing factor, the Tenant had been ill, was having continuing health issues, and was in intense pain, and pointed to two Dr.'s letters for my review.

R.N. argued that the Tenant is not a threat or immediate risk to the building, its residents, or the Landlord, and in fact has a deep connection to the building and its residents. R.N. stated that the Tenant never physically attacked anyone, never pointed the air javelin at C.J. or the babysitter, and made threats only in response to threats made against them and out of fear for their safety, their daughter's safety, and the safety of other building residents. R.N. pointed to character references submitted on the

Tenant's behalf and summarized several previous decisions from the Residential Tenancy Branch (the Branch) with regards to section 56 of the *Act*; however, copies of these decisions were not before me for review or consideration. R.N. also implored me to consider the Tenant's indigeneity as a mitigating factor in the incident and to take into account how housing insecurity will impact the Tenant and their daughter, as well as how it continues to impact indigenous women and girls across Canada.

Finally, R.N. stated that the Tenant agrees:

- Not to throw anything off the balcony;
- Not to damage the real property as they want to ensure that the community stays clean and maintained;
- To participate in dialogues to promote a safe and secure environment; and
- Not to use any weapons for the purpose of threatening others, despite the fact that the air javelin is no longer in their possession.

The Tenant stated that they recognize that they made a poor judgement call but that they reacted out of fear, not anger, as they too are a survivor of abuse and inter-generational trauma from residential schools. The Tenant stated that the incident was really about a man she does not know, coming and banging on their door, who is often seen outside of the building seemingly inebriated, as they are falling down and throwing things at the building. The Tenant stated that they, and a number of other occupants of the building, are fearful of this man, and that although they phoned the police with regards to this man once in the past, by the time they arrived he had already left. The Tenant also stated that they were on some fairly heavy medication at the time of the incident, that it was late at the time of the incident, and that they were in bed.

The Tenant stated that due to their history as a survivor of intimate partner violence, they were triggered when the unknown man, later identified to them as C.J.'s babysitter, and C.J., whom they do not really know, came banging on their door while they were home with their daughter, unwell, and on medication. The Tenant stated that the building is also not secure, that their balcony door does not lock properly, and the buzzers do not work, which heightened their fear. As a result, the Tenant stated that they were in fight or flight mode, and answered the door with the scariest looking thing in the rental unit, as they were fearful for their safety. The Tenant stated that it was not loaded with either CO2 or an arrow and that in fact, they did not even have any CO2 or arrows in the rental unit, which was confirmed by the police when they attended the rental unit the following day and ceased the air javelin. The Tenant stated that they were also afraid for C.J. and the other occupants of the building, as they are all single mothers, and that they knew C.J. had previously had issues with a man who attended

the building. Overall the Tenant stated that there was simply a misunderstanding that they and their friend J.O., who is also an occupant of the building, tried to resolve.

J.D. presented witness testimony that they live on the same floor as the Tenant, that they too have witnessed the babysitter stumbling around outside and were fearful of them, and that in the evening on November 1, 2021, they heard loud banging in the hallway and witnessed C.J. and the babysitter at the Tenant's door. J.D. stated that they reached out to both the Tenant and C.J. in an attempt to facilitate dialogue and diffuse the situation, but it was unsuccessful as C.J. did not attend due to the illness of their child. J.D. stated that they all try to look out for one another in the building and reiterated that they and other residents of the building have been fearful of the Tenant's babysitter.

The Tenant's witness D.D. stated that they are a child protection worker who was involved with the Tenant after the November 1, 2021, incident. D.D. stated that although the Tenant recognizes that they made a terrible judgement call on November 1, 2021, they were fearful, home alone with their daughter, sick, and on medication at the time of the incident, during which a male that they were fearful of came banging on their door. D.D. Stated that there were no child protection concerns and that they want to support the Tenant in maintaining their and their daughter's housing. D.D. also stated under cross-examination that in the future, the Tenant will keep their door locked and call the police if such an incident arises again.

I.B. clarified that they were unaware of the buzzer issue at the building at the time of the incident and stated that there is an internal portal for complaints, through which no complaints were ever received in relation to the babysitter. Under cross-examination J.O. acknowledged that they had not made any complaints via the portal regarding the babysitter but stated that they had discussed it with the building support worker and had considered calling 911 several times. I.B. also pointed out that the version of events presented by the Tenant and C.J. differ with regards to when the Tenant brought the weapon to the door, and argued that going back inside to get the weapon, as C.J. stated the Tenant did, constitutes unreasonable force. I.B. also argued that the threats uttered by the Tenant and the brandishing of a firearm, whether real or fake, loaded or unloaded, constitute offences under the Criminal Code of Canada. Finally, I.B. pointed to wording in a support letter from D.D. which they stated demonstrates that the Tenant know their actions were wrong, and pointed out that the Tenant apologizes for spitting on the babysitter in the video, which would also be assault.

Both the Tenant and R.N. denied that the Tenant spat on anyone or threw anything during the incident, and the Tenant stated that they were simply apologizing for things to deescalate the situation and get C.J. and the babysitter to leave their door. The babysitter neither attended the hearing to provide evidence and testimony nor submitted a written statement for my review.

Analysis

Section 56 of the *Act* states that a tenancy may be ended early by a landlord without the need to serve a notice to end tenancy on the tenant if an arbitrator is satisfied that the tenant or a person permitted on the residential property by 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 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;
- 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; or
- caused extraordinary damage to the residential property.

Section 56 of the *Act* also requires that the arbitrator be satisfied that 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.

Although section 56 of the *Act* allows Landlords to end a tenancy without the need to serve a notice to end tenancy under section 47 of the *Act*, in certain circumstances and where it would be unreasonable, or unfair to the landlord or other occupants of the property to wait for a One Month Notice to End Tenancy for Cause to be served and take effect under section 47 of the *Act*, section 56 of the *Act* is not intended to expedite matters of possession for a Landlord who could reasonably have served and enforced a One Month Notice. While I accept that the Landlord may have cause under section 47 of the *Act* to end the tenancy by way of a One Month Notice, for the following reasons I

am not satisfied that that 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 to take effect as required in section 56(2)(b) of the *Act*.

There was no disagreement between the parties that the item held by the Tenant during the incident which formed the basis for the Landlord's Application, was in fact an air javelin (a CO2 operated archery rifle), which was ceased by the police the day after the incident. There was no dispute between the parties that at the time of the incident, but unbeknownst to the complainant C.J., the Tenant had neither the required air cylinders to operate the air javelin or any arrows, and in the video submitted by the Landlord it appears clear to me that there is no arrow loaded into the air javelin. Further to this, in an email dated November 3, 2021, which is the day prior to the date the Landlord filed the Application seeking an early end to the tenancy under section 56 of the *Act*, L.R. (who is the vice president of Housing Services and Violence Prevention for the Landlord), acknowledged that police had attended to remove the "rifle", which was not an actual gun, that they (L.R.) did not think that the Tenant was a threat to staff, and that the Tenant's actions seemed to be based on a perceived threat from the complainant's guest. Finally, I am not satisfied that the Tenant either spat or threw anything during the incident.

Although the parties agreed that the Tenant had uttered a threat of violence, they disagreed about whether the utterance of the threat was in response to an uttered threat of violence from the complainant's guest towards the Tenant, and the portion of the integration between the Tenant, the complainant, and the complainant's guest, was not captured in the video submitted by the Landlord for my consideration. As a result, I find that it is possible, and perhaps even likely, that a threat was uttered against the Tenant by a person whom I am satisfied they already perceived, reasonably or not, to be a threat to them and other residents of the building, which I find to be a mitigating factor in the Tenant's behaviour. I am also satisfied that the Tenant was more likely than not, acting in self-defence, as the incident only occurred when the complainant and the complainant's guest went to the Tenant's door to initiate the incident, that the Tenant did not leave the rental unit to go into the hallway where the complainant and their guest were located, despite the fact that their reaction may not have been proportional to the perceived threat due to their history of trauma, most specifically, as a survivor of intimate partner violence.

As I am not satisfied that the Landlord has discharged the burden incumbent upon them under section 56(2)(b) of the *Act*, which I find to be fatal to and determinative of the Application, I therefore find it unnecessary to make any further findings of fact or law in

relation to the remaining grounds set out under section 56 of the *Act*. Based on the above, I therefore dismiss the Application, including the Landlord's request for recovery of the \$100.00 filing fee, without leave to reapply.

Conclusion

The Landlord's Application seeking an early end to the tenancy under section 56 of the *Act* and recovery of the filing fee is dismissed without leave to reapply. I therefore order that the tenancy continue in full force and effect until it is ended by the parties in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: December 15, 2021

Residential Tenancy Branch