



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET FFL

Introduction

The landlord seeks an order to end a tenancy pursuant to section 56 of the *Residential Tenancy Act* ("Act"). They also seek recovery of the application filing fee.

Both parties attended the hearing on December 9, 2021, and they were affirmed.

Submitted into evidence is a copy of the landlord's Proof of Service Notice of Expedited Hearing Dispute Resolution Proceeding #RTB-9 document ("POS"). The POS indicates that the tenant was served with a copy of the Notice of Expedited Hearing Dispute Resolution Proceeding (the "Notice") at 12:00 PM on November 26, 2021, and that the Notice was attached to the front door of the rental unit. The POS further indicates that the Notice was served by the landlord in full view of a third-party witness (S.P.G.).

The landlord confirmed that all documentary evidence was served on the tenant, and the tenant did not make any objection to this statement.

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.

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 application filing fee?

Background and Evidence

The tenancy began some time ago, and monthly rent is \$955.00. A \$425.00 security deposit was paid by the tenant. This deposit is currently held in trust by the landlord. A written tenancy agreement was submitted into evidence. It is worth noting that the rental unit is one of four rental units in a fourplex residential property.

The landlord's application states the following (spelling errors corrected):

The tenant has verbally harassed 2 women one with numerous sexual overtones to the point it has affected her health, the other now stays secluded much of the time and is afraid of him. A third tenant in the building has had to call the police due to having his apartment broken into ransacked and things missing, another time the same tenant entered the apartment & tried to pick a fight with him again the police where called. He Disputed the 30day eviction file # [Other File No. as indicated on the cover page of this decision; redacted here for privacy reasons] Date set Feb 24, 2022

In his testimony, the landlord gave evidence that the tenant has harassed and accosted other occupants in the residential property and that "people are feeling very threatened by" the tenant. He continued, "we don't need this type of abuse going on." What is more, the tenant is often intoxicated to the point that he cannot recall his actions. Submitted into evidence by the landlord are various handwritten and typed statements from the other affected tenants.

One statement in particular concerns an incident that occurred on November 25, 2021. The statement (titled PDF_Kathy's_Further_statments.pdf) includes the following description of the incident (excerpt only, reproduced as written):

I was sitting in my living room with my front door open and blocked, I was crocheting and watching a movie when I noticed a shadow in the doorway. I glanced upland was extremely startled. It was [tenant] from [address of rental unit]. This is the same may who made an obscene phone call a few months back. As I was trying to stand up to go and shut the door [he] pushed his arm, hand and part of his body into the open space, waving a paper around and yelling at me.

The landlord testified that he was home during the above-noted incident, and heard the noise, but was unable to attend to see what was going on.

The tenant testified that the letters and statements “are bullshit.” He testified that the Notice was posted on his door after he had made several requests of the landlord to repair various things in the rental unit, including a broken exterior light. However, insofar as the landlord’s claims go, the tenant works seven days a week and is otherwise “staying good and quiet . . . and not bothering anyone.”

While he admitted to making one “smart remark” to another occupant’s friend (who asked the tenant if he “jerked off”), he denied ever accosting or harassing anyone. Further, he acknowledged that he had attended to the complainant neighbour’s rental unit to see if she had authored a letter, and he asked if she had written the letter, but he then walked away. The tenant reiterated that “those letters are bullshit!”

In his brief rebuttal, the landlord emphasized that there is a “total pattern of harassment to a number of people.” And, that the landlord “would really like my tenants to feel safe.”

During his rebuttal the tenant wanted to emphasize that “I don’t even talk to anyone” except “the old man George.” Otherwise, the tenant does not talk to anyone, he does not bother anyone, and he does not harass anyone. Concluding, he remarked that he would never threaten anyone because if one does threaten someone they should be prepared to follow through.

Analysis

[Section 56\(1\)](#) of the Act permits a landlord to make an application for dispute resolution to request (a) an order 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 (a “One Month Notice to End Tenancy for Cause”), and (b) an order granting the landlord possession of the rental unit.

In order for me to grant this relief, I must be satisfied, 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 dispute, the landlord claims that the tenant has variously accosted, harassed, and otherwise verbally abused other occupants in the residential property. The tenant vehemently denies those allegations.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above* their testimony to establish their claim.

In this case, while the landlord has submitted into evidence statements from three other occupants, given the tenant's full disagreement with the contents of those letters ("those letters are bullshit," to use the tenant's description), the letters – without the occupants themselves testifying in the hearing to corroborate and confirm the accuracy and truthfulness of the contents – must be afforded little evidentiary weight. In other words, I am not prepared to accept uncorroborated, unsworn statements from third parties (who did not attend to provide oral evidence) as evidence of the claims which have been made by the landlord, when those claims are denied by the tenant. This is not to say, however, that the tenant may not have engaged in the alleged behavior. Rather, there is simply no evidence for me to find that he did so in a manner that gives rise to a successful application to end the tenancy early.

For these reasons, I am not persuaded, on a balance of probabilities, that the tenant has breached any of section 56(1)(a) of the Act. And it is for this reason that the landlord's application must be dismissed in its entirety, without leave to reapply.

It should be noted that my findings of fact and law in respect of this application are neither precedential nor have any effect on the arbitrator's findings of fact and law in respect of the hearing on February 25, 2022.

Conclusion

The landlord's application is dismissed, without leave to reapply.

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

Dated: December 9, 2021

Residential Tenancy Branch