



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on December 27, 2021 seeking an order to end the tenancy on the basis that the Tenant poses an immediate and severe risk to the property, other occupants, or the Landlord. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 3, 2022. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

Both the Landlord and the Tenant attended the hearing. I provided both parties the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Matter

The stated objective of the *Residential Tenancy Branch Rules of Procedure*, as found in Rule 1.1, is “to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.” The Rules allow for an expedited process in line with s. 56 of the *Act*. Rule 10.3 specifies that an applicant must serve each respondent with the Notice of Dispute Resolution Proceeding, instructions, a fact sheet, and their evidence submitted to the Residential Tenancy Branch.

The Landlord in the hearing stated they delivered the Notice of Dispute Resolution Proceeding to the Tenant, and the Tenant confirmed the same. The Landlord provided a document entitled ‘Proof of Service’. This document states that *only* the Notice of Dispute Resolution Proceeding document was served to the Tenant on December 1,

2022. On this basis, I find it more likely than not that the Landlord did not serve their prepared documentary evidence, and video material to the Tenant.

The Tenant stated they did not serve their own prepared evidence to the Landlord. This was because they did not receive evidence from the Landlord here.

I do not accept or consider evidence not provided to the other party for this hearing. I apply Rule 3.17 for this purpose. To consider evidence not disclosed to the other party would result in a breach of the principles of natural justice. I made both the Tenant and the Landlord aware of this in the hearing and reminded each of them that their oral testimony, affirmed under oath, stands as evidence. On this basis, the hearing proceeded, and each party had the opportunity to fully present their submissions.

Issue to be Decided

Is the Landlord entitled to an order of possession that ends the tenancy for cause, by s. 56 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee?

Background and Evidence

The Landlord provided their testimony in the hearing to set out how they believe the conduct of the Tenant constitutes a reason to end the tenancy. They set out the Tenant's actions:

- they issued a Two-Month Notice to End Tenancy for Landlord's Use because their parents have the need for the rental unit
- since they issued that Two-Month Notice in December 2021, the Tenant started threatening them
- the Tenant's threats on the evening of December 23 prompted the Landlord to go to the police; the police explained to the Landlord that if the Tenant was arrested, they would only return to the property, therefore the matter belongs to the Residential Tenancy Branch
- there was a "loud strange noise" and then the Tenant's child was chasing the Landlord "every night, pointing, making it unsafe for [the Landlord] to live there"

- the Tenant alluded to their occupational specialty, stating it was easy for them to “play with wires” in order to cause a fire on the premises
- the Tenant also threatened to give notice that the balcony was broken and they would throw themselves off the balcony to prove an injury due to the Landlord’s negligence
- after their second call to the police, the police gave warning to the Tenant on December 24

As a result of what they experienced from the Tenant, they felt unsafe when around the home because the Tenant’s live in the upper half of the structure. They either stay in their truck when having to sleep at their home, or else their own sibling accompanies them to the property when they need to visit the property to attend to something.

The Tenant provided a background to the situation prior to the Landlord’s service of the Two-Month Notice. The Tenant and the Landlord had a difference of opinion on space in the garage for each of their vehicles. This came to the point of the Landlord confronting the Tenant on December 19, with the Landlord yelling and demanding the Tenant move their items out from the garage.

The Tenant’s child called the police, being so upset about the tenor of the interaction. The police instructed that communication between the parties should only be written. On December 23 the police visited to the Tenant to ask the Tenant their whereabouts and instructed the Tenant to not make threats to the Landlord. The Tenant visited to the police to ask for a restraining order or other restriction against the Landlord. With no evidence or recording of the Landlord’s behaviour, the police made no arrest.

As a preventative measure the Tenant installed four cameras. They captured what they allege was the Landlord placing something in their own personal property in the garage space. The Tenant proffered their opinion that this was the Landlord looking for an excuse to move the Tenant out immediately.

A neighbour attended the hearing as a witness and spoke on their observations of the situation. A family member of the Tenant told this neighbour that the Landlord was making strange accusations about them, and also made sexual comments. This neighbour offered a safe place to the Tenant and their family should the need arise.

A co-worker of the Tenant attended the hearing as a witness. They spoke to the impact the situation was having on the Tenant. They affirmed their belief of what they have

seen: that the Landlord is a bully and is attempting to manipulate the situation of a pending end to this tenancy, “wanting to take it [their] own way.”

The Tenant’s family member also attended the hearing and described the Landlord as “constantly making horrible threats against the whole family.” This family member was subject to comments of a sexual nature. They described the impact the whole situation is having on them and their sibling, making it very difficult to study. This Tenant’s family member was candid in describing that they are looking for another living arrangement.

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end tenancy were given under s. 47 [*landlord’s notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.

The *Act* s. 56(2) follows with two criteria. First, as per subs. (1) the landlord must provide the cause for issuing the Notice. Additionally, the evidence must show, as per subs. (2), it would be unreasonable or unfair to the landlord to wait for a set period Notice to End Tenancy to take effect under a different s. of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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 . . .

Clearly the parties are not on cordial terms, and this has involved the police who visited to answer calls from either party. The Landlord has not provided sufficient evidence to show there was an assault or threats uttered. The Tenant's testimony, as well as those of their witnesses, outweigh what the Landlord presented in the hearing. Because of this, the tenancy will continue and not end because of this Application.

The Landlord described police visits; however, they were not accurate in their descriptions of events, and this was not supplemented with reliable evidence that was properly disclosed to the Tenant for this hearing. There is no specific information on dates, times, and number of incidents involving the Tenant. It is difficult to establish the reliability of their evidence. In short, these are bare allegations with no evidence to make the allegations reliable. This diminishes the credibility of the Landlord here.

The existing end-of-tenancy Two-Month Notice also works against the Landlord. It adversely lends weight to the Tenant's account, in that they are stating the Landlord is attempting to end the tenancy earlier by other means. One of the Tenant's witness accounts in the hearing lent weight to this theory.

The Tenant provided sufficient evidence in the form of witness' direct testimony in the hearing. This outweighs the Landlord's account. For serious charges of this nature to end a tenancy, the Landlord must provide evidence. The Tenant has the legal right to challenge that evidence and in order for them to do so in a dispute resolution process, they must know the case against them. The Landlord failed to make proper disclosure of their evidence in this instance, so there is no associated end of tenancy coming from this process.

As per s. 56, I must be satisfied of the two criteria present, listed above. I am not satisfied that the tenant has done any of the actions listed in subs. (a) (i) through (v); therefore, I am not obligated to consider whether it is unreasonable or unfair for the landlord to wait for the other means of ending the tenancy with cause.

My reason for this is there is insufficient evidence that there is an immediate danger to the health, safety or security of the Landlord. Each side presented testimony that there were verbal confrontations and words spoken. The Landlord was not convincing in setting out that there were actual threats uttered by the Tenant, and there is insufficient evidence to illustrate any other actions of a serious risk of danger.

In conclusion, I find there is insufficient proof to show the Tenant's behaviour rose to a level that was reason to end the tenancy in this manner. An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant. This method of ending the tenancy is for serious and immediate risk of danger; I do not find that to be present in this case. I find that the oral testimony presented by the Landlord does not show that to be the case.

I find the Landlord has not proven there is reason to apply for an order that ends the tenancy early by application of s. 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a s. 47 notice to end tenancy.

Because they were not successful in this matter, I make no award for reimbursement of the Application filing fee.

Conclusion

I find the Landlord's evidence does not show the Tenant's actions are an immediate and severe risk to the property or the Landlord. I dismiss this Application for an early end of tenancy and an order of possession for the rental unit, without leave to re-apply.

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

Dated: February 4, 2022

Residential Tenancy Branch