



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET FFL

Introduction

The landlord requested an order ending the tenancy and an order of possession pursuant to subsection 56(1) of the Residential Tenancy Act ("Act"). In addition, the landlord sought to recover the cost of the application filing fee under section 72 of the Act. (Landlord's counsel advised that they are not seeking to recover the filing fee.)

A dispute resolution hearing was held, by way of teleconference, at 9:30 AM on May 24, 2022. In attendance for the landlord were the landlord's legal counsel, and three witnesses. The tenant did not attend the hearing, which concluded at 9:44 AM.

The landlord's witness (S.M.) testified under oath that he served the tenant with the Notice of Dispute Resolution Proceeding by posting it on the door of the rental unit, in accordance with section 89(2)(d) of the Act, on April 14, 2022 at 19:10 hours. Based on this undisputed evidence it is my finding that the tenant was served with the required documentation necessary for him to fully participate in the dispute resolution process.

Issue

Is the landlord entitled to orders under subsection 56(1) of the Act?

Background and Evidence

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 issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on January 1, 2022 and monthly rent is \$2,400.00. There is no security or pet damage deposit for this tenancy.

The landlord's witness (Cst. D.B.) testified under oath that on January 28, 2022 the police attended to the rental unit to deal with an aggravated assault. The tenant and other occupants on scene were uncooperative with the police, despite a victim who had been shot through the neck with an arrow. The police responded "lights and sirens" due to the seriousness of the incident; having to respond in this manner puts the public's safety at risk, the officer noted.

The police officer further testified that there are a couple of parks and an elementary school near the property, which adds to the public safety concern of having to respond to this type of incident. The officer testified that there have been shots fired, stabbings, and drug trafficking activities at the subject property.

Another witness (D.B.) for the municipality testified under oath that the rental unit is a problem property. There has been illegal construction on the property, which has caused a nuisance to the neighbours and is a public safety concern. The witness reiterated, as the first witness had, that there are public parks, an elementary school nearby, and lots of kids running around. The individuals who come and go from the rental unit are causing lots of grief in the neighbourhood, and the municipality was about to declare the property a "nuisance" property (which would result in expensive charges being levied against the landlord for each police or fire callout). The property is unsightly and there is stolen property being stored in the backyard.

Last, the landlord's witness S.M. provided additional testimony regarding significant vehicular traffic and a high number of people who come and go from the property after short visits. This, he explained, is usually indicative of drug trafficking or drug sales.

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.

The landlord's application is made under section 56(1) of the Act, which states that

A landlord may make an application for dispute resolution requesting

- (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 [*landlord's notice: cause*], and
- (b) an order granting the landlord possession of the rental unit.

In order to grant the orders under this section, section 56(2)(a) and (b) of the Act states that an arbitrator must be satisfied that

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 case, based on the entirety of the events – most significantly the frequent police responses to stabbings, assaults, shootings, and the notable arrow-through-the-neck incident – the evidence persuades me to find that the tenant or persons permitted on the residential property by the tenant have engaged in illegal activity that have (1) adversely affected and are likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, and (2) jeopardized the landlord's lawful right and interest through the risk of having the property be designated as a nuisance property.

Moreover, it is my finding that it would be both unreasonable and unfair to the landlord to have to wait for a notice to end the tenancy under section 47 of the Act. This tenancy must be ended as soon as possible – in this case, immediately.

Conclusion

IT IS HEREBY ORDERED, PURSUANT TO SECTION 56 OF THE ACT, THAT:

- 1. the landlord's application is granted;**
- 2. the tenancy is ended effective immediately; and,**
- 3. the landlord is granted an order of possession of the rental unit.**

A copy of the order of possession is issued in conjunction with this decision, to the landlord. The order of possession must be served on the tenant in accordance with the Act.

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

Dated: May 24, 2022

Residential Tenancy Branch