



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This expedited hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for an early end to tenancy because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord, pursuant to section 56.

Both the landlord and the tenant attended the hearing. The tenant acknowledged service of the landlord’s Notice of Dispute Resolution Proceedings and the landlord acknowledged service of the tenant’s evidence. Neither party took issues with timely service of documents.

Preliminary Issue

The landlord’s application was scheduled as an expedited hearing under Rule 10 of the Residential Tenancy Branch Rules of Procedure. Rule 10.2 states:

10.2 Applicant’s evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

Pursuant to Rule 10.3, *the landlord must serve the evidence submitted in accordance with rule 10.2, together with the Notice of Dispute Resolution Proceedings within one day of the Notice of Dispute Resolution Proceedings being made available by the Residential Tenancy Branch.* Consequently, only the documentary evidence that was submitted to the Residential Tenancy Branch on April 5, 2022, by the landlord and served upon the tenant would be considered for this hearing. The three documents I’ve allowed from the landlord are entitled: MB_Slander-1.jpg; MB_Slander-2.jpg; and Refusal_to_Leave_by_Effective_Date.jpg.

The landlord acknowledged being served with the tenant's evidence package at least 2 days before the hearing, in compliance with rule 10.5 and the tenant's documentary evidence would be considered in this decision. The parties were advised of this at the commencement of the hearing.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to prove the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord and that it would be unreasonable or unfair to the landlord to wait for a notice to end tenancy under section 47 [landlord's notice for cause] to take effect?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents permitted to be presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the permitted documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony.

The landlord seeks an early end to the tenancy without giving the tenant a 1 Month Notice to End Tenancy for Cause because the landlord feels that the tenant poses an immediate threat to his safety and the safety of his family. The tenant has slandered and harassed him. The landlord fears the tenant will spread misinformation into the public and the landlord may lose his job.

The rental unit is a half duplex owned by the landlord. The landlord lives in the other half duplex located on the same residential property. The tenancy began on January 15, 2017. It was originally a fixed term tenancy but became month to month at the end of the fixed term. Rent is currently \$1,500.00 per month and the landlord is holding the tenant's \$750.00 security deposit.

The landlord sold the entire duplex house recently and the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use on May 25th.

Upon learning the landlord was going to sell, the tenant sought to enter into a lease with the landlord to secure her tenancy. The landlord refused, saying nobody would purchase the duplex with a tenant in it on a long term lease.

Since serving the notice to end tenancy, the tenant has been acting unpredictable and erratic to the point where the landlord had to hire 2 lawyers. One lawyer sent a cease-and-desist letter to the tenant after the tenant “verbally and electronically” aggressive towards him. The landlord testified that the tenant’s aggressive behaviour prevents him from working at home or staying at home. He’s afraid to have his son come over for fear of exposing him to the tenant’s “violent” interactions. The landlord also fears the tenant will damage the home and that the new buyers will require the landlord to do repairs before the closing date.

The landlord testified that the tenant has made false accusations against him. The tenant accused the landlord of sexual misconduct with the tenant’s last roommate, who is mentally disabled. The tenant sent the landlord accusatory texts and sent the landlord’s girlfriend texts alleging the same. Copies of the text messages were provided as evidence. After being blocked on social media, the tenant created false accounts to further harass and slander the landlord online. The landlord testified that he has never been charged with anything, never assaulted anyone sexually or otherwise. The threats to slander his reputation in public is a real concern for the landlord. The landlord is troubled by the tenant’s allegation of sexual misconduct and questions the tenant’s motives in making them. It’s simply a real estate transaction that the tenant is turning into an “unbelievable amount of stress, anxiety and pain”. The landlord states he could lose his savings if the sale of the duplex doesn’t go through.

The landlord states he has an affidavit from the purchaser of the duplex whereby they state they feel unsafe, and they are concerned about their impact on their business from the tenant’s actions.

During the hearing, I reminded the landlord that I was unable to refer to the purchaser’s affidavit as it was not provided in accordance with rule 10.2 of the rules of procedure. The landlord also referred to several other documents that were not provided in accordance with rule 10.2 during the hearing, however I did not interrupt the landlord’s testimony to remind him that I would not review them in writing my decision.

The tenant gave the following testimony. When the landlord started looking at selling the duplex, he asked the tenant to assist in seeing if the deeds could be split and if so,

the tenant may be able to purchase her side of the duplex. After selling the duplex, the landlord wanted to see if he could back out of the deal and the tenant tried to assist.

The tenant is not a dangerous person and has had a good relationship with the landlord until he decided to sell the rental unit. She and the landlord have had sexual encounters before. She has babysat the landlord's child and the landlord's son is not scared of her. She witnessed the landlord when signing his will. She and the landlord worked together to make noise complaints about the neighbours.

The sexual misconduct allegations against the landlord are legitimate, but they have nothing to do with this application for an early end to tenancy, submits the tenant. The tenant has never done anything illegal, so the reasons for ending the tenancy early based on illegal activity is void. She tried to negotiate with the landlord and is willing to pay more rent.

Her conversations with the landlord were civil and she her texts were "blocked out of nowhere". She is not a threat to the landlord. She and the landlord share a driveway and they greet each other cordially. The tenant is just trying to find a new place to live and is flabbergasted by the treatment from the landlord. The tenant submits that the landlord filed an application seeking an early end to tenancy in order to avoid having to compensate the tenant with the equivalent of a month's rent.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that 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 interests 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;
- caused extraordinary damage to the residential property, **and**

it would be unreasonable, or unfair to the landlord, the tenant 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*Applications to end a tenancy early are for **very serious breaches only** and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest **committed** the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).*

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- *A witness statement describing violent acts committed by a tenant against a landlord;*
- *Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;*
- *Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or*
- *Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.*

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In the application before me, the landlord claims that the tenant's erratic and aggressive text messages and social media posts cause him distress and anxiety, leading to a need to end the tenancy early. The first issue I must address is that the landlord has failed to show how my ending of the tenancy early would stop the tenant from continuing to send texts or post messages on social media. There is no cause and effect shown between the two. The tenant's ability to cause whatever damage to the landlord's reputation that he is trying to prevent remains intact regardless of whether I end the tenancy early or not.

Second, as the policy guideline states, the landlord must provide sufficient evidence to prove the tenant committed a serious breach of the *Act*, regulations or tenancy agreement. Keeping in mind that the bulk of the landlord's documentary evidence was excluded for not being submitted at the time the application was filed, I do not have sufficient evidence before me to corroborate the landlord's testimony of egregious harm to the landlord. I have read the text messages between the landlord and tenant which the landlord characterizes as "slanderous" and I do not see those texts as posing an ***imminent danger to the health, safety, or security of a landlord.***

While the landlord claims the tenant is violent and aggressive, I find the landlord has not provided sufficient proof to corroborate it. The landlord did not testify that he or his family was physically harmed in any way by the tenant and no evidence such as photographs of injuries were supplied. While the landlord may perceive the tenant as being violent or aggressive, he has not met the burden to satisfy me his perception is valid. Fear of damage to the landlord's reputation is not an imminent danger to his health, safety or security and is therefore not a cause to end a tenancy early.

I find that the landlord has provided insufficient evidence to satisfy me the tenant committed a breach of the *Act*, regulations or tenancy agreement serious enough to justify ending the tenancy early under section 56 of the *Act*. I do not find there is an immediate or severe risk to the landlord, other occupants of the building or to the rental unit. While the conduct of the tenant may be disturbing to the landlord, I am not convinced the tenant's tenancy should end without providing the tenant with a notice to end tenancy for cause and giving the tenant the entire month for the tenancy to end under section 47. I find that the Landlord has fallen short of the standard required to obtain an early end of tenancy under section 56 of the *Act*.

Consequently, I dismiss the Landlord's application for an early end of tenancy under section 56 of the *Act*, as I find it neither unreasonable nor unfair that the Landlord to wait for a One-Month Notice to take effect and for the required hearing process under that notice.

Conclusion

I dismiss the landlord's application. This tenancy will continue until it ends in accordance with the *Act*.

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: May 04, 2022

Residential Tenancy Branch