



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This 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.

The landlord attended the hearing at the appointed time of 9:30 a.m., represented by building manager, CG (“landlord”). The tenant called into the hearing at 9:50 a.m., 20 minutes after the hearing commenced. The tenant confirmed receipt of the landlord's Notice of Expedited Hearing and stated he had no issues with timely service of documents. The tenant did not provide any documents for this hearing, although he testified that he tried to upload a video file that was too large for the dispute management system to accommodate.

The landlord testified that she had uploaded additional evidence in relation to this expedited hearing some time after filing the original application for dispute resolution, however that evidence was not before me in the system. I advised the landlord that Rule 10.2 of the Residential Tenancy Branch Rules of procedure states that all evidence the applicant intends to rely upon at the hearing must be submitted with the application for dispute resolution.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to satisfy me that the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord?

Background and Evidence

The landlord gave the following testimony. The rental unit is a first floor room in a Single Room Occupancy building. The month to month tenancy began on October 1, 2020 with rent set at \$375.00 per month.

The reason the landlord seeks an early end to tenancy is because of a couple of incident reports. On May 23, 2022, "T", a guest of the tenant came to visit and got into an altercation with the security of the building. Pursuant to an addendum to the tenancy agreement (not supplied as evidence in this proceeding), the tenant is responsible for the actions of his guests.

On March 22, 2022, the tenant brought in an underage guest. The landlord testified that the tenant breached a "condition" in bringing in the underage girl. When I inquired what type of condition the tenant is bound by: probation, bail, conditional sentence order – the landlord was unable to verify. The landlord also testified that bringing in the underage girl violates the rules – however the landlord did not provide a copy of the rules the tenant allegedly violated. The landlord testified that the police were called and took the underage girl out of the building and the tenant was arrested. The landlord does not know if the tenant was charged with an offence.

The landlord found records from a previous manager that indicates the tenant, with others in the building were observed trying to break into another unit on November 17, 2021. This was recorded on video, however the landlord could not produce that video because the videos are erased after 6 months. She does not know why the landlord did not seek to end the tenancy back in November 2021, as she was not the manager at the time.

The landlord called a witness, JV to testify. JV testified that he is the Director of Support Housing for the landlord organization. JV testified that the tenant had constructed a canopy type structure outside his window, creating a patio-like area. On June 6, 2022, JV spoke to the tenant, advising he couldn't erect the structure and asked him to take it down because it is unsafe and not part of the unit being rented. The tenant agreed, as long as the garbage being thrown from the windows above got cleaned up regularly. When JV went down to the parking lot to speak to the workers he hired to take down the structure, JV looked up and saw a 2"x6" flying in his direction. After the board hit his arm, JV sought medical attention inside the building, had the wound cleaned and patched, and he filed a report with worksafe BC. JV testified that he didn't actually see the tenant throw the board, but the tenant looked him right in the eye after it happened.

Lastly, prior to the tenant calling in, the landlord testified that the previous manager served the tenant with a 1 Month Notice to End Tenancy for Cause in late March for the same instances recounted in this hearing. The landlord has not yet filed an application for dispute resolution seeking an Order of Possession based on this notice to end tenancy.

The tenant gave the following testimony.

He doesn't know the "guest" who got into an altercation with the security and who was trying to get into his unit on that day. "T", the name provided by the landlord is not familiar to him, and he does not know anybody by that name. The tenant testified that the police came and asked him questions about "T". Apparently "T" supplied his address as an address to his bail supervisor or probation officer without the tenant's knowledge.

Regarding the underage guest, when the tenant first called into the hearing, the tenant testified that the police came and verified the guest was of legal age then left. Later in his testimony, the tenant acknowledged that incident happened and there is no dispute to the incident. It's the first and only time this has happened.

The tenant's response to the injury to JV's arm as follows. The whole incident was videotaped on his phone but he couldn't upload the video to the dispute management system. The tenant has 2 windows facing outward. There is a ledge area that collects garbage thrown from the windows above. He built the structure to prevent the accumulation of garbage under his window. The tenant had no problem with the landlord taking down the structure as long as the landlord agreed to clean the breezeway more frequently. The structure was not screwed into the building at all, it was a floating structure made up of 3 pieces of wood. He did not throw any board out the window and he has the proof in the video however that video was not before me for this hearing.

The tenant made no reference to the November 17, 2021 incident of break in, as he was not on the line when the landlord provided testimony about it.

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.

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.*

In this case, the landlord provided testimony, supplemented by critical incident reports as evidence of the tenant's breaches. I have reviewed the landlord's testimony and documentary evidence submitted for this hearing and 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.

The landlord acknowledges she had video evidence of the alleged break in from November 2021 but could not provide that to me in corroboration of her testimony. I do not know whether the tenant has been charged or convicted of the alleged offence. I am left questioning why the landlord didn't seek to end the tenancy at that time and instead waited to seek an emergency early end to the tenancy immediately after the incident or serve the tenant with a 1 Month Notice to End Tenancy for Cause.

The onus to prove the reasons for ending the tenancy are valid falls upon the landlord pursuant to rule 6.6 of the Residential Tenancy Branch Rules of Procedure. The standard of proof is on a balance of probabilities. I find the tenant's explanation of "T" being unknown to him is legitimate, based on the lack of corroborating evidence from the landlord to prove otherwise. The tenant cannot be held responsible for the actions of a person he does not know, just because they say they are his guest, truthfully or not.

Likewise, JV's testified that he can't actually prove the board that fell and hit him was intentionally thrown by the tenant. He did not see the tenant throw it. It is just as likely that it could have accidentally fallen or been thrown by any of the other units in the

building. Consequently, I cannot attribute the board falling to a violent act committed by the tenant.

Lastly, the landlord testified that the tenant is “breaching a condition” by allowing an underage guest into his room. The landlord also states that it’s against the “rules” of the building. The landlord did not provide a copy of the bail, probation order or conditional sentence order allegedly breached by the tenant. Nor did the landlord provide a copy of the “rules” allegedly breached by the tenant. Although the tenant may have acknowledged this has happened, I have insufficient evidence before me to indicate this is a breach of the Act, regulations or tenancy agreement.

While the landlord may have sufficient grounds to succeed at obtaining an order of possession based on the notice to end tenancy for cause served in accordance with section 47, I do not find there is an immediate or severe risk to the landlord, other occupants of the building or to the rental unit. I am not convinced the tenant’s tenancy should end without providing him with 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, the application seeking an early end to the tenancy is dismissed without leave to reapply.

Conclusion

The application is dismissed without leave to reapply.

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: July 11, 2022

Residential Tenancy Branch