



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODSMERE HOLDINGS CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This expedited hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to end the tenancy early due to circumstances where there is an imminent danger to the health, safety, or security of a landlord, tenant or the landlord's property pursuant to section 56; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants and the landlord attended the hearing. The landlord was represented by an agent, property manager DL ("landlord"). As both parties were present, service of documents was confirmed. The tenant acknowledged being served with the landlord's notice of expedited hearing and evidence. The landlord did not have the tenants' evidence package before him for this hearing.

The tenants testified that they personally delivered their evidence package to the landlord at the landlord's place of business on Friday, August 15th by giving it to the landlord's receptionist in an envelope marked with the name of the landlord on the front. The tenants told the receptionist that the envelope was for "B", the representative who filed the application in this case. The landlord attending this hearing, (not "B") had his assistant deliver the envelope from "B's" inbox to him and acknowledged having it before him during the hearing. I find the landlord was effectively served with the tenant's evidence 2 days before the hearing in accordance with Rule 10.5 of the Residential Tenancy Branch Rules of procedure.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of

Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to show that the tenancy should end early for an imminent danger to the health, safety or security of the landlord or another tenant?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents 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 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 fixed 1 year tenancy began on May 1, 2021. Rent is currently set at \$1,825.00 per month, payable on the first day of each month.

On June 30, 2022, the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause. The parties agree that the tenants filed an application to dispute this notice to end tenancy however neither party was able to provide me with the file number.

The landlord testified that there was an altercation involving these tenants at the end of June, 2022. The occupant of the unit below the tenants was annoyed from the sound of water draining and went up to the tenants' unit to complain. The landlord alleges that there was pushing and shoving done, profanities were yelled at one another and the argument was taken into the hallway. Both parties called the police who came to

investigate. The landlord testified that they have a zero-tolerance for verbal or physical abuse in the building and for this occurrence, the tenants must be evicted.

The landlord acknowledged during the hearing that the occupant of the unit below accepted a 1 Month Notice to End Tenancy for Cause given to him over the same incident and has since moved out. The landlord accepts that the tenants are not the only ones responsible for the altercation and that the occupant below should not have confronted the tenants. Despite this, the swearing and yelling in the hallways is serious enough to seek an early end to the tenancy. Lastly, The landlord further acknowledged that despite this one incident, both tenants have not caused any trouble and have paid their rent on time.

The tenants gave the following testimony. "K", the occupant who used to live below them was once the friend of one of the tenants. They used to hang out. At 8:00 p.m. on the night in question, "K" pounded on their door screaming profanities. When the tenants' guest, (brother to one tenant/son to the other tenant) opened the door, "K" lunged at one of the tenants who was cleaning the floor with a Swiffer. "K" refused to leave and continued to scream "illegal activity" and swear at them while the tenants tried to get "K" to leave their unit. "K" refused to leave. The tenants had to push "K" out of the unit and down to the exit while "K" continued to scream profanities. Other than pushing "K" out, the tenants didn't lay a hand on him.

The tenant SM testified that "K" has an excessive drinking problem and has been "written up" by the landlord many times while SM has not. SM justified pushing "K" out of their unit, stating that he was protecting his family.

In rebuttal, the landlord reiterated that these are good tenants but he wishes they took a different approach to "K"'s actions, such as shutting the door and locking it when "K" came to complain.

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).*

I find the landlord has failed to provide sufficient evidence to satisfy me the tenant committed any breaches of the *Act*, regulations or tenancy agreement that are serious enough to justify an early end to the tenancy. Ending a tenancy by seeking an early end to tenancy under section 56 of the *Act* is an extraordinary measure, reserved for the most serious breaches of the *Act* where there is an **imminent** danger to the health,

safety or security of another tenant or the landlord. I find the landlord has provided insufficient evidence to establish that this is the case. The landlord acknowledged that the tenants' behaviour throughout the tenancy has been good, except for the single incident which I find was instigated wholly by "K" when he chose to confront and attack the tenants in their own home. It would be patently unreasonable to expect the tenants to not react to "K" lunging and swearing at them. Any reasonable person would react the same way as the tenants did – try to remove "K" from their unit and into the hallway exit without harming him.

While the tenants' conduct on that night in June may have been disturbing to other occupants of the residential property, I find the circumstances of this case are not so significant or severe that it would have been unreasonable for the Landlord to have to wait for the One-Month Notice served to the tenants to take effect if there was sufficient cause to end the tenancy. I make no finding as to whether there was sufficient cause to end the tenancy, as I understand the dispute to the notice to end tenancy for cause will be heard at a later date.

I do not find it would be unreasonable or unfair for the landlord or other occupants of the residential property to wait for the notice to end tenancy under section 47 [landlord's notice: cause] to take effect. Therefore, 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 and the application is dismissed without leave to reapply.

The application seeking to recover the filing fee is likewise dismissed without leave to reapply.

Conclusion

This 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: August 17, 2022

Residential Tenancy Branch