



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: ET FFL

Introduction

The landlord applies for an order ending the tenancy early, pursuant to section 56 of the *Residential Tenancy Act* ("Act"). In addition, landlord seeks to recover the cost of the application filing fee pursuant to section 72 of the Act.

Attending the dispute resolution hearing were the landlord's building manager and another gentleman who was assisting. The tenant did not attend the hearing, which began at 9:30 AM and ended at 9:40 AM.

The building manager was affirmed, and he gave evidence that the tenant was served with the Notice of Expedited Dispute Resolution Proceeding by Canada Post registered mail. Copies of the registered mail tracking information was submitted into evidence, and I am satisfied based on this evidence that the tenant was served with the required notice and paperwork necessary for him to participate in the dispute resolution process.

Issues

1. Is the landlord entitled to an order under section 56?
2. Is the landlord entitled to recover the cost of the filing fee?

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

Briefly by way of background, the tenancy began December 15, 2012 and monthly rent is \$997.00. The tenant paid a \$425.00 security deposit. A copy of the written tenancy agreement is in evidence.

The particulars of the landlord's application are as follows:

Tenant has become increasingly violent since service of previous RTB case application for non-payment of rent (please see file #[redacted]). Tenant has now assaulted the building manager twice and has caused disturbance and fear among other tenants due to extreme noise levels/fighting/thrown objects in his suite. Heavy sleep disruption has occurred in early hours of morning multiple times. Police have been called out on multiple occasions, both by the manager and by other worried tenants

The building manager testified under oath that the written submission provided an accurate and truthful narrative of the facts. The building manager confirmed that “I have recently been assaulted twice by this tenant,” and, “Most importantly, he has begun threatening my safety, and we fear this may potentially lead to threats to the safety of others in the building.”

One of the two recent incidents in question occurred as follows (reproduced from the written submission, slightly formatted for readability) on July 14, 2022 at 4-5:30 AM:

Building managers were woken up at approximately 4:00 AM. Extreme noise, vibration/shaking of building frame due to heavy objects or people being thrown/falling on floor etc. Manager went through building to see where it was coming from. When he got to [tenant's] floor, [tenant] opened his door and saw [building manager] (manager) from across hallway – [tenant] looked tense and aggressive, manager thought he might want to attack him. Manager stayed near stairway so he could escape.

[Tenant] was upset, and manager discussed the situation with him. Manager told him the whole building was woken up by his behaviour, etc. and told him he'd had to call the police again. [Tenant] ran after the manager as he left and started backing him towards the wall again. Then he grabbed the manager's neck – the manager tried to push him away. [Tenant] then accused the manager of hitting him (again, same as last time this occurred). [Tenant] tried to punch the manager in the face. The manager dodged and pushed him away. [Tenant] tried to grab the manager's phone, and then chased after him again, trying to grab him from behind. The manager asked a concerned tenant witnessing the scene to call the police for him.

Additional documentary evidence, including redacted written complaints from other tenants in the building, were submitted and briefly considered.

Analysis

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.

To grant the orders under this section, section 56(2)(a) and (b) of the Act states that an arbitrator must be satisfied on a balance of probabilities that a tenant has:

- (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, the undisputed oral and documentary evidence persuades me that the tenant has engaged in behavior and actions that meet the type of activity described in subsections 56(2)(i), (ii), and (iv)(C) of the Act. Moreover, given the ongoing, violent nature of the tenant's behavior, I find that it would be both unreasonable and unfair to the landlord and other occupants of the residential property for them to have to issue a *One Month Notice to End Tenancy for Cause* under section 47 of the Act.

Taking into careful consideration all the undisputed evidence before me, it is my finding that the landlord has proven, on a balance of probabilities, that they are entitled to orders ending the tenancy early and to an order of possession of the rental unit. An order of possession is issued in conjunction with this decision to the landlord.

As the landlord was successful in their application, they are entitled to recover the cost of the application filing fee, pursuant to section 72 of the Act. Section 38(4)(b) permits me to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is hereby ordered to retain \$100.00 of the tenant's security deposit in satisfaction of the amount awarded.

Conclusion

IT IS HEREBY ORDERED THAT:

1. the application for orders under section 56 of the Act is granted.
2. the tenancy is ended effective immediately.
3. the landlord is granted an order of possession effective two (2) days from the date of service of the order of possession upon the tenant.
4. the landlord is authorized to retain \$100.00 of the tenant's security deposit.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act.

Dated: August 16, 2022

Residential Tenancy Branch