



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

*A matter regarding J&A PROPERTIES LTD. and
[tenant name suppressed to protect privacy]*

DECISION

Dispute Codes ET

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as the Landlord says the Tenant poses an immediate and severe risk to people and/or property.

Three agents for the Landlord, K.S., C.B., and A.L. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. However, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 45 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord's Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about it. During the hearing the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agents testified that the Tenant was served with the Notice of Hearing documents and evidence by Canada Post registered mail, sent on September 14, 2022, and picked up by the Tenant on September 15, 2022. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenant was deemed served with the Landlord's Notice of Hearing documents and evidence in accordance with the Act. I,

therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agents in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided their email address in the Application, and the Agents confirmed it in the hearing. They also confirmed their understanding that the Decision would be emailed to the Landlord, and mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agents that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the tenancy be ended early or not?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Agents explained that the Landlord acquired the property in November 2021, and that there was no tenancy agreement for the Tenant at that point; they confirmed that the Tenant refused to sign a new one. The Agents said they understood that the tenancy started about 15 years ago, and that the Tenant pays \$913.00 a month to the Landlord in rent. The Agents confirmed that the Landlord holds the Tenant's \$450.00 security deposit and no pet damage deposit for this tenancy,

The Agents said that on July 30, 2022, the Tenant was served in person a One Month Notice to End the Tenancy for Cause ("One Month Notice"), which was signed and dated July 29, 2022. The Agents said that the One Month Notice was served by a process server, who provided an affidavit of service, which the Agents submitted into evidence. The effective vacancy date was August 31, 2022. The grounds for the One Month Notice include:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and

- put the Landlord's property at significant risk;
- Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
- The Tenant or a person permitted on the property by the Tenant has caused
- extraordinary damage to the unit or property; and
- Tenant has assigned or sublet the rental unit/property without the Landlord's written consent.

The Tenant disputed this Notice and filed for dispute resolution. A hearing is scheduled for this matter on January 9, 2023.

In the hearing, the Agents explained the grounds for this expedited hearing for an early termination of the tenancy. The Agents emphasized that pursuant to the Act, and in addition to his own behaviour, the Tenant is responsible for the behaviour of other people he permits on the property.

The Agents directed me to Schedule "A" of their Application, which sets out the circumstances on the residential property. They noted that the Landlord own a number of properties, which include several detached houses and one vacant lot in the city. The Agents said that the Landlord owns properties adjacent to the residential property before me in this Application. The Agents said the evidence will show that the Tenant and those he has permitted on the property have put persons near and on the property, and the property, itself, at risk.

The Agents indicated that the grounds for the Application before me are that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed neighbouring tenants of the Landlord, and the Landlord. The Agent explained:

The Landlord owns not only [the residential property address], but property to the east and south of that, as well. It's not a situation of a basement tenant and main floor tenant, but the nature of the disruption here is interfering with the Landlord's adjoining properties.

They mentioned safety concerns arising from the people the Tenant permits to stay on the property, and that the Tenant puts the Landlord's property at significant risk. The Agents raised as an alternative ground, that the Tenant has engaged in illegal activity that is likely to damage the Landlord's property.

The Agents explained that it would be unreasonable or unfair to the Landlord or neighbouring tenants of the residential property, to wait for a one month notice to end the tenancy to take effect. The Agent noted that the hearing to confirm the validity of the One Month Notice is not scheduled for three months from now. The Agent said it is not reasonable to require a Landlord to wait that long for an order of possession in a situation like this.

The Agents went into detail about affidavits they submitted to the RTB and served on the Tenant. These include the affidavit of one of the Agents, A.L., who indicated that she is one of two directors of the Applicant Landlord's organization. A.L. said that the Landlord purchased the property from another corporate landlord in November 2021. This Agent said that she is also a director on the vending corporate landlord, and that she has dealt with the Tenant in the residential property for years.

In her affidavit, A.L. said:

The Property is in a Derelict State

6. The Property is a detached house dating from approximately the mid-1940s. It is about 900 square feet in size. It was purchased by [the prior owner] in or around 1983 along with several adjacent properties.
7. I have attended the property on a number of occasions and observed that the Property is in a state of extreme mess and dereliction.
8. The Property has old knob-and-tube electrical wiring on a 60 amp breaker. It is at risk of being overloaded by modern appliances.
9. That type of electrical infrastructure, as well as the low capacity breaker, combines to make the Property hazardous. I have been advised by two electrical contractors that it requires a complete top-to-bottom overhaul before it can be safe for habitation. I have been told that it will be difficult if not impossible to insure it going forward, in its current state.
10. Other repairs and renovations at the home are badly needed. I do not know the full extent of these required repairs, because [the Tenant] has refused to permit me or other contractors I have sent to the Property to access the Property.

The remainder of A.L.'s affidavit addresses the issue that the Tenant: "has permitted

squatters / unapproved subletters without permission and other criminal activity.”

The Agents referred to a strip of land between the residential property and an adjacent property. The Agents said it is unclear to whom this property belongs; however, the Agent said:

This piece of land is supposed to be grassed and landscaped, but has been using it as private driveway, and until June of this year [the Tenant] parked a one ton truck – a big, squatter U-Haul truck on the property. Witnesses have been observing people coming and going from this truck. There’s a makeshift cooking area, a barbecue. Someone was living in this truck.

The Agents referred me to exhibit C of A.L.’s affidavit. This exhibit is a photo of a vehicle in a field next to what looks like a barbecue and a large box truck.

The Agents said:

The squatting of people in the truck also given rise to further consequences. There are no suitable places for them to relieve one’s self. [A.L.] found piles of feces in the vacant lot nearby. Access to the vacant lot is only granted through [the Tenant’s] property. He’s permitting people to live on the property and access the vacant lot next door.

The Agents referred me to Exhibit B, which is an invoice for a property clean up, including debris removal, junk removal, and removal of toxic waste, including removing five pails of corrosive cleaning liquid. The invoice also referred to the removal of 12 separate dropping places of human feces.

The Agents referred me to Exhibit H of A.L.’s affidavit, which has a photograph of the front of a one-ton truck, with five pails of corrosive, toxic liquid in front of it. They said:

The pails became a concern of doing environmental harm to the property, but also there’s a concern of liability for people walking by and coming through the property, and any incidents that may arise.

The Agents then referred me to Exhibits D and E of A.L.’s affidavit, which are a letter and an email to the Landlord from the City about bylaw infringements. The letter dated May 30, 2022, in Exhibit D states:

RE: Unsightly premises at [residential property address] (“the property”)

[The City] has recently conducted an inspection and confirmed the properties contain two uninsured vehicles, which are in contravention of the [City] Unsightly Premises and Graffiti Abatement Bylaw [bylaw no. provided] (“the bylaw”). The owner must ensure regular maintenance is done to prevent further enforcement. No owner or occupier shall cause or permit the storage of a vehicle on any landscaped portion under [the bylaw].

The property must be brought back into compliance by **June 6, 2022**. Please be advised should you fail to comply with this notice or remedy the contravention(s) by the specified date, the City may, without further notice, do one or more of the following:

- a) Issue tickets in accordance with the Ticketing for Bylaw Offences Bylaw, No. [XXXX] and any amendments thereto;
- b) By its own officers, employees, or other persons, remedy the non-compliance at the expense of the owner or occupier and recover the cost of such work either as a debt against the owner or occupier in default or in the same manner and with the same remedies as property taxes;

Your cooperation in this matter is anticipated and appreciated. Should you have any questions or concerns, you may contact me at [telephone number provided].

[emphasis in original]

The Agents submitted an earlier letter dated May 27, 2022, to the Tenant from the Landlord’s property management company. In this letter, the property manager said:

Tenant
[residential property address]

Dear [Tenant]:

RE: Removal of Vehicle(s) from Property Premises

We write as Management Agents for the above-referenced rental property.

It has been brought to the Landlord’s attention that an incident occurred this week, and that the Police and [City] Bylaw Officers both attended to the premises

on May 23rd and May 24th.

The Landlord has been made aware of the two vehicles present on the property premises at [rental unit address]; namely, a truck/van, and another car seemingly filled with blankets and uninsured, possibly since 2019.

At the request of the Landlord, and from communications with the [City] Bylaw Officers, **please arrange for your vehicles to be removed from the premises by Tuesday, May 31st**. Regardless of whether these vehicles are yours or not, please be confirmed that the Landlord will be arranging for both of these vehicles to be towed from the premises if they remain on the premises on May 31st.

Should there be any fines issued by [the City] in relation to the vehicles apparently permitted on the premises after the requested removal date of May 31st, these costs would be charged back to you.

Thank you for your cooperation in this important matter.

[emphasis in original]

The Agents stated:

A.L. further deposes that she has attempted to resolve the issues in person – see letter via property managers, and then in person. These were not fruitful, and in the conversation, [the Tenant] was frequently aggressive and hostile, yelling and swearing, and he told her he would deal with the bylaw himself, because he has done so in the past. Unfortunately, the deadline came and went and nothing had occurred.

[The City] forcibly removed the vehicles from the strip of land.

RCMP were calling her on numerous occasions. Police were describing [the Tenant] as ‘a hostile renter’. They suggested she use them to keep the peace.

The Agents provided a police file number, and said that because of access to information and privacy laws, they could not get more reports from the police on time for the hearing’s document submission deadline.

The Agents referred me to an affidavit of T.L., who lives next to the residential property.

In his affidavit, T.L. says he lives next door to the residential property, and that there is a vacant lot next to the residential property. T.L. also said:

6. There is a vacant lot next to the Property on [street name], diagonally North-East from my house. For a long time, the vacant lot has been filled with garbage, debris, and has appeared to have squatters living in it.
7. On one occasion, I was being picked up for work by my friend and co-worker, [B.]. While I was gathering my things to join him, I heard a commotion outside and [B.] honking his horn. As I left the house, I saw [B.] approach someone I did not know standing by the side of my house. I was informed after by [B.] and therefore believe, that he had seen this man come around or from inside the truck, approach the side of my house and begin to urinate on one of the walls. [B.] explained that by honking his horn and causing a commotion, he had intended to interrupt and deter this person from urinating on my house.
8. Since the truck was moved, [the Tenant] has continued to use the Grass Area as his personal driveway.
9. I do not know how many people are living at the Property. I have regularly seen the same 3 or 4 cars parked on the Grass Area.
10. I have also been informed by [B.] that the Property has a widespread reputation across the neighbourhood as being a 'drug house.' While I have no independent information to verify that, [B.] has lived in the neighbourhood, just down the street, for a long time, and I trust his judgement about local matters. As a neighbour it is concerning to me if there is illegal activity taking place next door.

In another affidavit submitted by the Agents, C.A. affirmed being a neighbour to the residential property, and he reiterates much of what was said in T.L.'s affidavit, such as having witnessed people from vacant lot urinate on or near C.A.'s house. C.A.'s affidavit includes:

6. On another occasion which I recall as being in early June 2022, I was present for an interaction between [A.L.] whose company owns both my home and the Property, and [the Tenant]. [A.] was attempting to explain to [the Tenant] that the strip of land between my home and the Property was not a driveway: it was a lawn area, and [the City] bylaw enforcement had

taken issue with vehicles parked there, including the truck where the person mention above appeared to be living. [The Tenant] was very angry and acting in an intense, aggressive way. He was shouting at [A.] and saying it was 'his parking' area. I also heard [the Tenant] say to [A.] that he had rented the 'parking' area out, and that if [A.] was going to prevent him from renting the area out he would demand a corresponding reduction in his rent.

The Agents referred me to the affidavit of G.D., who is a realtor and licensed builder. The Agents said that G.D. attended the residential property on June 6 to assess the property for damages. The Agents said:

Again, conflict arose, between [the Tenant] and [A.L.] when speaking about the truck, and further, that when [the Tenant] was told they were in attendance for repairs, [the Tenant] turned angry and hostile, screaming, and yelling that 'you can't be here. I'm the tenant...'. . . He eventually relented and permitted access to the home, following them around the home and remaining hostile and angry through out the assessment.

Finally, the Agents explained to me why it would be unreasonable or unfair to the Landlord or other occupants of the residential properties to wait for a One Month Notice to end the tenancy. The Agents said:

There are ample grounds under one or more of sections above, but part of the test of whether it's unreasonable or unfair to wait for a One Month Notice to take effect. One [eviction notice] was served, and a hearing is set for January 9, 2023. This time delay confirms that a Landlord issuing a One Month Notice isn't precluded from applying for dispute resolution under section 56 of the Act.

The Agent referred me to a previous decision of another arbitrator in this regard. While I may be guided and influenced by other decisions, I am not bound by them. However, I note in this other decision, dated March 29, 2022, the arbitrator addresses the application of a One Month Notice versus being granted an early end to the tenancy pursuant to section 56 of the Act. The other arbitrator said:

In the matter before me, the landlords did serve the tenant with a One Month Notice in response to the incident of December 6, 2021. Considering the tenant disputed the One Month Notice and a hearing is scheduled for May 2022, I accept that if the circumstances are so urgent and severe, it may not be reasonable to wait for the One Month Notice to be heard and it is reasonable for

the landlords to proceed to make an Application under section 56 of the Act. Therefore, I find that the landlord's issuance of a One Month Notice does not preclude the landlord from making an application under section 56 and I continue to consider the remedy requested.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In order to establish grounds to end the tenancy early under section 56 of the Act, a landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony and documentary evidence of the Agents, I find that they have met that burden.

I accept the Landlord's undisputed evidence that the Tenant or persons he has allowed on the property to have significantly interfered with or unreasonably disturbed another occupant and the Landlord of the residential property, in addition to residents of neighbouring properties.

I find the Landlord submitted sufficient evidence that persons allowed on the property by the Tenant to have squatted in the vacant lot adjoining the residential property, and lived there in a van. The people living there have been witnessed urinating on neighbouring houses, and leaving debris and garbage throughout the park area. Bylaw officers have imposed fines on the Landlord in this regard.

I also find that the Tenant's inability to communicate with the Landlord's Agents without yelling, swearing and being aggressive presents a danger to the Agents. In addition to this aggressive behaviour, the Agents have police files and evidence that illegal behaviour may also be going on at the residential property. I find such activities, along with police having to be called to the residential property would cause the Landlord, and the neighbours to be significantly interfered with and unreasonably disturbed.

I also find the state of the electrical infrastructure of the residential property puts not only the Tenant, but those he permits on the property, and neighbours to be at significant risk.

Due to these conclusions on the evidence before me, I therefore find that the Landlord

has proven that the Tenant has significantly interfered with or unreasonably disturbed another occupant and the Landlord, as well as put the Landlord's property at significant risk.

I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for the One Month Notice to End Tenancy to take effect and be enforced three months from now at the next hearing. I find that without an earlier end to the tenancy, the Landlord is less likely to be able to preserve their property and comply with local bylaws.

I, therefore, grant the Landlord's Application to end this tenancy early, pursuant to section 56 of the Act. Pursuant to section 56, I grant the Landlord an **Order of Possession** of the residential property. Since the effective vacancy date of the One Month Notice has passed, the **effective vacancy date** will be **two days after service** of this Order **on the Tenant**.

I note and commend the Landlord for not also applying for reimbursement of their \$100.00 Application filing fee, as the Agents said they recognize the Tenant's financial difficulties. I also commend and thank the Agents for presenting clear, concise evidence, which organization made my job easier.

Conclusion

The Landlord's Application is successful, as they provided sufficient evidence to prove their need for an early end to the tenancy. The tenancy ended on August 31, 2022. The Landlord is granted an **Order of Possession effective two days after service** on the Tenant. This Order of Possession granted pursuant to section 56 of the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 05, 2022

Residential Tenancy Branch