



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This 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.

The tenants did not attend the hearing, although I left the teleconference connection open throughout the hearing which commenced at 9:30 a.m. and ended at approximately 10:15 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing accompanied by his spouse, SB. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that the tenants were personally served with the Notice of Dispute Resolution Hearing packages and evidence, including the video evidence on September 15, 2022. A signed proof of service document was filed to corroborate this testimony. I am satisfied the tenants were duly served with the Notice of Dispute Resolution Hearing packages in accordance with Rule 10 of the Residential Tenancy Branch rules of procedure and sections 89 and 90 of the Act.

This hearing proceeded in the absence of the tenants.

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 of the property or the landlord?

Background and Evidence

The landlord gave the following undisputed testimony. The rental unit is a mobile home located on a parcel of property housing a commercial dog kennel, 5 residences in a house out front, a permanent travel trailer and the tenants' mobile home.

A copy of the tenancy agreement was provided as evidence. The tenancy began on May 1, 2022, with rent set at \$1,200.00 per month payable on the first day of each month. There is an addendum to the tenancy agreement that states:

Your employment as caretaker at [the kennel] includes living accommodations for the duration of your employment. If employment is terminated by either party, the suite must be vacated at the end of your employment”.

The landlords testified that the tenants were to do odd jobs around the property and in return, they would get the reduced rent of \$1,200.00. The landlords testified that they terminated the tenants' employment at the end of May as the actions of the tenant JM was frightening the staff at the kennel and the other occupants living on the residential property.

The landlord testified that the tenants occupying the travel trailer are a gay couple and the tenant JM has made offensive, derogatory, and threatening statements to the couple. The couple provided a written statement where JM told one of them that he “*would punch my head off the property*”. He fears for his safety and checks over his shoulder all the time because of that incident.

One of the tenants living in the residence out front provided a written statement where she states the tenant got defensive and aggressive towards her, screaming at her to the point of saliva landing on her clothes, due to her request for the tenant JM to move his vehicle from the driveway she rents. She states that she thought the tenant JM was going to assault her physically.

The manager of the kennel located on the property filed a written statement indicating the tenant JM confronted her on August 20th, yelling and swearing at her. She “*felt very threatened, he was very aggressive and intimidating*”. The assistant manager also provided a statement regarding an incident on June 21 where the tenant yelled at her

and other instances where she heard the tenant yell, making herself and customers of the kennel feel intimidated. The landlords testified that the manager of the kennel quit her job because she was intimidated by the tenant and that their kennel business has lost clientele for the same reason.

The landlord provided some video evidence that appears to depict a person driving into a parking lot, 2 dogs appear and come back shortly after a man gets out of the car. The landlords state that this video depicts evidence of illegal or disturbing activity. Lastly, the landlord provided an audio clip of a voicemail left by the tenant to the landlord at 4:30 on an unknown date and the tenant swears and threatens the landlord in an intimidating way, according to the landlord.

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 the matter before me, the landlord has not provided any substantive evidence of illegal activity, or activity for which either of the tenants have been charged with a criminal offence. I have viewed the video supplied and I cannot discern any breaches of the Act or the law. Nor did the landlord provide documentary evidence of extraordinary damage being done to the rental property or activity by the tenants that put the property at significant risk. Although the landlords have cited a loss of clientele and a manager quitting due to intimidation from the tenant JM, this does not constitute damage to the property or a risk to the property.

The remaining reasons to end the tenancy early are that the tenants:

- 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.

I find the landlord has provided insufficient evidence to satisfy me there is a serious threat to the landlord or other occupants of the residential property. As stated in the policy guideline, *the landlord must provide sufficient evidence to prove the tenant committed the serious breach. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.* For me to consider the breach, the landlord must provide supportive evidence that the tenants actually committed the breach, not just evidence of threats that harm may come.

In this case, the tenant JM swore at the landlord and other occupants of the property, threatened them, and otherwise made them uncomfortable. However, there is insufficient evidence of the commission of a **very serious breach** of the Act or anything that leads me to believe there is an **imminent threat** of harm coming to the landlord or any of the other occupants of the property. Although the tenant JM acts in an intimidating and threatening manner; before me there is a lack evidence of the tenant actually following through with any violent acts after making these threats.

Under the circumstances, I find it would be reasonable for the landlord to issue to the tenants a 1 Month Notice to End Tenancy for Cause under section 47 or a 1 Month Notice to End Tenancy for End of Employment under section 48 and allow a full month for it to take effect. The tenants would have the opportunity to either dispute the notice or accept it and vacate the property within the month.

Consequently, the landlord's application seeking an early end to the tenancy pursuant to section 56 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: October 06, 2022

Residential Tenancy Branch