



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET**

Introduction

This hearing was convened by conference call as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for an early termination of the tenancy and an Order of Possession pursuant to section 56.

The Landlord's agents ("SD" and "GS") and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

GS stated the Landlord served the Notice of Dispute Resolution Hearing and its evidence ("NDRP Package") on the Tenant by registered mail September 23, 2022. The Landlord submitted a Proof of Service on Form RTB-9 and the Canada Post tracking number to corroborate his testimony on service of the NDRP Package on the Tenant. I find the NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act.

The Tenant did not serve any evidence on the Landlord.

Preliminary Matter – Redaction of Names on Evidence Submitted by Landlord

During the hearing the GS referred to two witness statements the Landlord submitted to the Residential Tenancy Branch for this proceeding. The Tenant stated that the copies of the witness statements had been blacked out. GS acknowledged he had blacked out the names on the two witness statements to protect the witnesses. I explained to the Landlord that the Tenant had the right to know the identify of witnesses who have provided evidence of events that are relevant to this hearing. Based on the testimony of

GS, the Tenant was able to identify of witness who provided one the witness statements. As such, I accepted that witness statement into evidence. However, the identify of the person who provided the second witness statement was not evident to the Tenant. As such, I did not accept the witness statement from that person into evidence for this proceeding.

Issue to be Decided

- Is the Landlord entitled to an early end to the tenancy pursuant to section 56 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

GS submitted into evidence a copy of the tenancy agreement between the Landlord and Tenant. The parties agreed the tenancy commenced on July 1, 2021, on a month-to-month basis, with rent of \$800.00 payable on the 1st day of each month. The tenancy agreement required the Tenant to pay a security deposit of \$400.00. Based on the foregoing, I find there is a tenancy between the Landlord and Tenant for the rental unit and that I have jurisdiction to hear the Application. SD stated the Tenant paid the \$400.00 security deposit and the Landlord was holding it in trust on behalf of the Tenant. The Tenant stated he paid \$450.00 for a deposit. As the amount of deposit is not relevant to the issue of whether the tenancy should be ended pursuant to section 56 of the Act, I make no finding on the amount paid by the Tenant for the deposit.

SD stated the Landlord was seeking to end the tenancy on the basis that the Tenant had seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant of the residential property. SD stated that the Landlord was relying on two incidents involving the Tenant to end the tenancy as more fully described below.

GS stated the Tenant lives on the third floor of the residential property. GS stated that, on September 11, 2022, he was called by one of the tenants in the residential property who told him that the Tenant had run an electrical cord across the common hallway from his door to the outlet on the other wall of the hallway. GS stated the Tenant's electrical service had been shut off. GS stated the extension cord consisted of two

different types of wire that were taped together. GS submitted into evidence two photos showing the electrical cord running across the common hallway on the third floor. Two separate types of electrical cord are visible in the photos. GS stated he was concerned about the safety for the building because of the potential for fire as well as the theft of the electrical service paid for by the Landlord. GS stated he knocked on the Tenant's door and pointed out the cord running across the hallway. GS testified that the Tenant told him in a loud voice that he wasn't doing his job, why start now, used a profane expression and then the Tenant closed his door. GS stated he told the Tenant through the door that this was unacceptable behavior. GS stated the Tenant opened his door again and pushed him across the hallway into the wall and went back into his rental unit. GS stated he went back to his apartment and called the police. GS stated the police arrived at the residential property, talked to the Tenant and told him not to do this again. GS stated the police then told him that, as there were no witnesses to the incident and no video recording of it, there wasn't anything they could do about it.

The Tenant admitted he plugged an electrical cord into the hallway outlet because his electricity had been disconnected. The Tenant stated GS came to his door regarding the electrical cord. The Tenant stated he did not want to speak to GS at the time and he closed his door. The Tenant stated GS knocked on his door again and, when he opened his door, GS pushed the door open. The Tenant stated that, when GS attempted to enter his rental unit, he attempted to push GS back into the hallway. The Tenant stated his dog became very upset over what was happening. The Tenant stated GS attempted to enter his rental unit a second time and that he pushed GS out into the hallway and into the wall. GS stated he went to the police station and made his own report regarding this incident.

GS stated another occupant ("DL"), who lives on the second floor of the residential property called him in the late afternoon on September 10, 2022 and told him that there had been an incident involving the Tenant. GS submitted into evidence a witness statement from DL. In DL's witness statement, DL stated that, on September 10, 2022, the Tenant was yelling in the hallway and that he was accusing her of entering his rental unit and stealing his possessions. DL stated the Tenant then went down to the parking lot and was yelling up to her balcony, again accusing her and stating that "if GS (Manager) don't get rid of you I will". DL stated the Tenant's threat scared her. DL stated she did not respond to the Tenant's threats, closed her door and phoned the police. The Tenant denied he went to DL's door but admitted he yelled at DL from the parking lot. The Tenant denied he threatened DL.

SD stated it was urgent for the tenancy to end as GS did not feel safe doing his job in the residential property and DS stated in her witness statement that the Tenant's threat had scared her.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

The conditions that must be met for a tenancy to be ended early are set out in subsections 56(2) and (3) as follows:

Application for order ending tenancy early

- (2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that
 - (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (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.
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Residential Tenancy Branch Policy Guideline Number 51 [Expedited Hearings] (“RTBPG 51”) provides guidance on a landlord’s application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of that Policy are relevant to the Landlord’s application:

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

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).

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).

SD stated the Landlord was seeking to end the tenancy on the basis that the Tenant had seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant of the residential property. GS stated he was informed on September 11, 2022 by another occupant of the residential property that the Tenant had run an extension cord from the entrance door of his rental unit across the common

hallway to an outlet on the other wall of the hallway. GS stated the Tenant's electrical service was shut off. GS stated the extension cord consisted of two pieces of wire that were taped together. The photos submitted into evidence by GS clearly show two different types of wire. GS stated he was concerned about the safety for the building that could result from a fire as well as the theft of the electrical service paid for by the Landlord. GS stated he spoke to the Tenant and an altercation ensued and the Tenant pushed the Tenant across the hallway into the wall. The Tenant admitted he ran an extension cord across the common hallway to use the Landlord's electrical service. However, The Tenant stated he answered the door, did not want to speak to GS at the time and he closed his door. The Tenant stated GS knocked on his door again and, when he opened his door, GS pushed the door open. The Tenant stated that, when GS attempted to enter his rental unit, he attempted to push GS back into the hallway. The Tenant stated GS attempted to enter his rental unit a second time and that he pushed GS out into the hallway and into the wall.

Based on the foregoing, I find the electrical wire used by the Tenant was no safe and posed a serious fire hazard. I also find that the wire running across the common hallway posed a serious trip hazard to other occupants of the building, particularly if there had been an emergency that required occupants to vacate the residential property in an expedited manner. I also find that the Tenant's use of the Landlord's electrical service interfered with the normal operation of the Landlord's electrical service. As such, I find the Tenant seriously jeopardized a lawful right or interest of the landlord or another occupant and jeopardized the safety of the Landlord and other occupants of the residential property in respect of the Tenant's use of the Landlord's electrical service and running an extension cord across a common hallway used by other occupants of the residential property. However, as there were no witnesses or video of the incident between the Tenant and GS, I find the Landlord has not proven the Tenant seriously jeopardized the health or safety or a lawful right or interest of the Landlord's employee, GS.

GS stated DL called him in the late afternoon on September 10, 2022 and told him that there was an incident involving the Tenant. GS submitted into evidence a witness statement from DL. DL stated that, on September 10, 2022, the Tenant was yelling in the hallway and that he was accusing her of entering his rental unit and stealing his possessions. DL stated the Tenant then went down to the parking lot and was yelling up to her balcony, again accusing her and stating that "if GS (Manager) don't get rid of you I will". DL stated that the Tenant's threat scared her. DL stated she did not respond to the Tenant's threats, closed her door and phoned the police. As noted above, the Landlord submitted another witness statement that had the name of the witness crossed

out. As such, I did not accept this witness statement into evidence. The Tenant denied he went to DL's door but admitted he yelled at DL from the parking lot but denied threatening DL. In the absence of testimony or evidence to corroborate GS's evidence, I find the Landlord has not proven the Tenant seriously jeopardized the health or safety of DL.

SD stated it was urgent for the tenancy to end as GS did not feel safe doing his job in the residential property and DS stated in her statement that the Tenant's threat had scared her. SD did not provide any testimony or evidence the Tenant had attempted to plug an electrical cord into the Landlord's electrical service on a subsequent occasions after September 11, 2022 that would suggest the Tenant represented a continuing threat to the health or safety of other occupants of the residential property or to a lawful right of the Landlord. SD did not provide any testimony or evidence that there were any further altercations between GS or another employee with the Tenant that would suggest the Tenant represented a continuing threat to GS or any other employee of the Landlord. SD did not provide any testimony or evidence that the Tenant were any further altercations with DL after September 10, 2022 that would suggest the Tenant represented a continuing threat to the health or safety of DL.

Based on the foregoing, I find it would not 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 56(2)(b) of the Act. As such, I find the Landlord has not satisfied the requirement set out in section 52(2)(b) of the Act. I find the Landlord has not established it is entitled to an early end to the tenancy pursuant to section 56 of the Act. Accordingly, I dismiss the Application 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 25, 2022

Residential Tenancy Branch