



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord October 17, 2022 (the “Application”). The Landlord applied for an order ending the tenancy early pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

The Landlord appeared at the hearing with S.C., an articling student, and C.S., for support. The Landlord called L.S., their son, as a witness at the hearing. The Landlord intended to call a further witness at the hearing; however, the witness was not available when contacted by the articling student. The Tenant did not appear at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord and L.S. provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

S.C. advised that the hearing package and evidence were posted to the door of the rental unit October 26, 2022. The Landlord submitted a Proof of Service confirming service.

Based on the undisputed statement of S.C. as well as the Proof of Service, I accept that the Tenant was served with the hearing package and evidence October 26, 2022, in accordance with sections 88(g) and 89(2)(d) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the hearing package and evidence

October 29, 2022. I find the Landlord complied with rule 10.3 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted the written tenancy agreement between the parties which started October 01, 2021, and is a month-to-month tenancy.

The Landlord provided written submissions which detail the issues with the Tenant including the Tenant uttering verbal threats against the Landlord and L.S. as well as physically assaulting the Landlord. The submissions state that the police have been called approximately 40 times this year due to the Tenant's behaviour. The submissions state that the Landlord and others fear for their safety due to the Tenant. The submissions outline criminal charges that have been laid against the Tenant during the tenancy.

At the hearing, the Landlord confirmed the following. The Tenant has verbally threatened and physically assaulted the Landlord. The photos in evidence show the results of the Tenant physically assaulting the Landlord. The Landlord has called the police over 40 times due to the Tenant's behaviour. The Landlord is concerned for their safety and the safety of their son. L.S., the Landlord's son, lives on the property as well. The Tenant has been charged with criminal offences arising from uttering threats against the Landlord and L.S.

The Landlord testified that the Tenant has made death threats towards L.S. and threatened to sexually assault L.S.

L.S. testified as follows at the hearing. On June 11th, the Tenant physically assaulted and uttered threats against L.S. and L.S. filed a police report about this. Almost every day since, the Tenant has made racial and sexual slurs against L.S., the Landlord and other tenants. There was an incident where the Tenant brandished a knife towards L.S. and the Tenant was taken into custody for this. The Tenant has uttered threats against L.S. and has been taken into custody for this. The Tenant has made threats to kill L.S.'s dog. The Tenant has guests at the property that are violent.

S.C. sought an Order of Possession effective two days after service on the Tenant.

The Landlord submitted the following documentary evidence:

- Photos of bruising from the Tenant assaulting the Landlord
- Statement from L.S.
- Photos of the Tenant on the balcony with drugs
- Landlord's notes about police reports
- Documentation of the Tenant being charged with criminal offences

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or

5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet the above two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the following based on the undisputed evidence provided. The Tenant has uttered threats against and physically assaulted the Landlord and L.S. The Tenant has been taken into custody and charged with criminal offences due to their behaviour towards the Landlord and L.S. Police have had to attend the rental unit numerous times due to the Tenant's behaviour. The Landlord fears for their safety due to the Tenant's behaviour.

I find the Tenant has significantly interfered with and unreasonably disturbed the Landlord and L.S.

I find it would be unreasonable to require the Landlord to serve a One Month Notice issued pursuant to section 47 of the *Act* on the Tenant and wait for that notice to take effect because of the seriousness of the circumstances and because the circumstances involve threats and violence. I find the Tenant's behaviour is the type of behaviour that justifies ending a tenancy as soon as possible due to the seriousness of it and the risk to safety it causes.

I am satisfied the Landlord has met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit effective two days after service on the Tenant.

Given the Landlord has been successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act* and issue the Landlord a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply

with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to reimbursement for the \$100.00 filing fee. The Landlord is issued a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 10, 2022

Residential Tenancy Branch