



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 as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act.

The landlord and the landlord's spouse attended the hearing; however, the tenant did not attend. The hearing process was explained, and the landlord was affirmed.

As the tenant did not attend, the matter of service of the landlord's application on the tenant was considered.

The landlord stated he served the tenant with his Application for Dispute Resolution, evidence, and Notice of Hearing (application package), by personal service on November 4, 2022. The landlord filed a witnessed and signed proof of service.

I find the landlord submitted sufficient evidence that the tenant was served the landlord's application as required under section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the landlord's submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 10.2 under Expedited Hearings, states that the applicant must submit all evidence that the applicant intends to rely on at the hearing with the application for dispute resolution and serve the evidence and application to the respondent.

The only documentary evidence that was filed with the landlord's application was a 1-page "Activity Log of Complaints", a tenancy agreement, and the proof of service of the hearing documents. On November 28, 2022, the landlord filed other documentary evidence, which included witness statements.

As the evidence was not filed with the application, I have excluded this evidence from review or consideration.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to end the tenancy early and obtain an order of possession pursuant to section 56 of the Act?

Background and Evidence

The landlord provided a written tenancy agreement showing the tenancy began on August 1, 2015. The rental unit is an apartment in an 8-unit building.

To support his application, the landlord began with testimony about events beginning in December 2021. I asked the landlord to refer to more recent events.

The landlord testified that other tenants have made complaints about this tenant. Some of the complaints included that the tenant has pushed another tenant, threatened other tenants, and punched another tenant. There was a fire on the stove in the tenant's apartment, but the tenant dealt with it.

The landlord testified that the tenant disabled the smoke alarm and it had to be replaced.

The landlord testified that all the tenants in the residential property feel threatened by and are fearful of, this tenant, and there has been a report of the tenant having a gun. The landlord claimed that the other tenants were having trouble sleeping.

The landlord confirmed that they served the tenant with a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) on or about October 17, 2022. The landlord said they were unaware if the tenant filed an application for dispute resolution contesting the Notice.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 56 (2) of the Act applies and it indicates that:

The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

- (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.

(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.

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).*

The onus to prove their case is on the person making the claim, the landlord in this case. The standard of proof is on a balance of probabilities.

Section 56 of the Act lays out a 2-step process. The second part of the test is that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

In this case, I find the landlord submitted insufficient evidence to support their application.

The landlord's 1-page document showed issues with the tenant began on May 8, 2022, and I find these general statements were unsupported by sworn affidavits, testimony, or other evidence providing specific details of urgent circumstances, with dates. Although there were allegations of the tenant having a gun, threatening, and assaulting other tenants, I would have expected a police report to show these events had occurred. Apart from that, the landlord initially began his testimony by alluding to issues beginning December 2021.

As I have noted, I excluded the landlord's evidence that was filed 2 days prior to the hearing. While that evidence may have been relevant to the proceedings, I declined to review that evidence for the hearing.

Given the above, I therefore find that there was insufficient evidence of imminent danger to the health, safety, or security of a landlord or another tenant or occupant.

The landlord did not provide specific evidence relating to a claim that the tenant caused extraordinary damage to the residential property, and therefore, that matter was not considered.

For these reasons, I therefore find the landlord submitted insufficient evidence to meet the high bar needed to end this tenancy earlier than to wait for a one month notice to end the tenancy under section 47 of the Act.

I **dismiss** the landlord's application for an immediate end to this tenancy due to insufficient evidence, without leave to reapply.

I order the tenancy to continue until ended in accordance with the Act.

The landlord is at liberty to seek enforcement of the 1 Month Notice issued to the tenant.

Conclusion

The landlord's application fails due to insufficient evidence and is dismissed without leave to reapply as a result.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 01, 2022