



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes ET FFL

Introduction

The landlords seek an order end the tenancy early and an order of possession pursuant to section 56(1) of the *Residential Tenancy Act* ("Act"). They also seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

Procedural Matter: Attendance of Parties and Witnesses

A dispute resolution hearing was held by teleconference on January 30, 2023 and in attendance were the landlords, a witness for the landlords, the tenant, and a witness for the tenant. The landlords, their witness, and the tenant were affirmed, and all provided testimony regarding this matter.

The tenant's witness was not present at the rental unit on the relevant date on which the circumstances leading to this application occurred. As such, I did not affirm the tenant's witness and did not hear any testimony from him.

Preliminary Issue: Service of Evidence and the Notice of Dispute Resolution Proceeding

Both parties testified that they served the opposing side with documentary evidence. Both sides denied ever having received any evidence from the opposing side. Based on the oral testimony (which is sworn evidence) given in these proceedings I did not need to consider either party's documentary evidence or make no findings as to service.

That having been said, the tenant acknowledged being served with the Notice of Dispute Resolution Proceeding. The landlords' Canada Post registered mail tracking information indicates that the Notice of Dispute Resolution Proceeding was delivered on January 10, 2023. This is, I find, service which was in compliance with the deadlines set out in the Act and the *Rules of Procedure*.

Issues

1. Are the landlords entitled to orders under section 56(1) of the Act?
2. Are the landlords entitled to recover the cost of the filing fee?

Background and Evidence

In order to be successful in an application under the Act, an applicant must prove their case on a balance of probabilities. While I have considered all of the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

The tenancy began on May 1, 2015 and monthly rent is \$1,100. The tenant paid a \$400 security deposit and there is a written tenancy agreement in evidence. The rental unit is a basement suite; the tenant lives downstairs in the basement suite and his landlords live upstairs.

The landlords testified that they served the tenant with a 24-hour notice to enter the rental unit. The notice was served on January 4, 2023. The tenant acknowledges that he received the notice. The landlords and their contractor had to temporarily shut off the water because of renovations that were taking place upstairs.

On January 5, the landlords and their contractor (who is also the landlords' witness) knocked on the door of the rental unit. There was no answer. And so they used their key to gain access to the rental unit. Upon entering the rental unit, they witnessed the tenant sitting in the kitchen holding a rifle and loading it with bullets.

The landlords and the contractor quickly exited the rental unit, with the tenant telling them to get out of his house and "out of his castle." They called 911 and the police attended and arrested the tenant. The police also seized three rifles and a handgun. They also, according to the landlords who spoke with the police, retrieved ammunition stored in four or five drawers in the rental unit. The tenant was later released from custody and returned to the rental unit later that evening.

The landlords' contractor testified that when they knocked on the door but got no response, the landlord used his key to unlock the door to the rental unit. They heard a rustling noise. The male landlord opened the door and the contractor had "a barrel staring at me." The tenant apparently was trying to lock his gun and the contractor heard two clicks. The party of three then exited the rental unit. This occurred just after 5 PM on January 5, 2023, the contractor confirmed.

The tenant testified that “mostly what [the landlord] said is fairly accurate with a few exceptions.” He clarified that no handgun was involved in the incident. But it was confiscated along with the rifles. The tenant conceded that the landlords had given him proper notice of entry.

However, he ignored the notice (he was also ignoring texts from the landlords because he did not have a good relationship with them) and “stupidly” thought that someone was trying to break in. The tenant was tired of dealing with the landlords’ (the male landlord in particular) aggravation, belligerence, and ignorance. At the conclusion of his testimony the tenant apologized to the contractor for what occurred that afternoon.

Analysis

The landlords’ application is made under section 56(1) of the Act, which states that

A landlord may make an application for dispute resolution requesting

- (a) an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
- (b) an order granting the landlord possession of the rental unit.

In order to grant the orders under this section, section 56(2)(a) and (b) of the Act states that an arbitrator must be satisfied that a 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; [. . .] [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.

In this case, the landlords' undisputed testimony persuades me to find on a balance of probabilities that the tenant, on or about 5 PM on January 5, 2023, seriously jeopardized the health and safety of the landlords. I say undisputed testimony because the tenant did not dispute the stated fact that he was sitting at the table loading a rifle, or that he pointed the barrel of the rifle at the landlords and their contractor, or that he basically chased them out of the rental unit with a rifle in hand, or that the police attended and took him away and confiscated his guns and ammunition.

In respect of subsection 56(2)(b), it is my finding that it would be unreasonable and unfair to the landlords (or anyone else who attends to the property to help with renovations or other activities) to have to wait for a *One Month Notice to End Tenancy for Cause* to take effect. Indeed, I have no difficulty in accepting the landlords' testimony and statement that in the twenty-eight years they have lived in this home they have never felt so unsafe.

Taking into consideration all the evidence before me, it is my finding that the landlords have proven, on a balance of probabilities, that they are entitled to an order ending the tenancy and to an order of possession of the rental unit.

Therefore, pursuant to section 56(1)(a) of the Act it is hereby ordered that the tenancy shall end effective January 30, 2023. Further, pursuant to section 56(1)(b) of the Act the landlords are granted an order of possession of the rental unit, and the tenant must vacate the rental unit within two days of being served with the order of possession.

A copy of the order of possession is issued in conjunction with this decision to the landlords. The landlords (or someone acting on their behalf) must serve a copy of this order of possession upon the tenant or at the rental unit. Service of the order of possession may be made by any method permitted under section 88 of the Act.

Because the landlords' application is granted, they are entitled to recover the cost of the application filing fee under section 72 of the Act. Pursuant to section 38(4)(b) of the Act the landlords are ordered and authorized to retain \$100.00 of the tenant's security deposit as compensation for the cost of the application filing fee.

Conclusion

The application is granted.

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: January 30, 2023

Residential Tenancy Branch