



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an early end to this tenancy and an Order of Possession pursuant to section 56.

CG and DS appeared for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

Preliminary Issue: Service of Hearing Materials

While the tenant confirmed receipt of the landlord's application for dispute resolution ('Application') and evidence package, which was posted on the tenant's door on January 9, 2023, the tenant disputes having received the USB. The landlord argued that the USB was included in the package, as shown in the photographs taken of the package. In light of the evidence before me, I am satisfied that the landlord did submit sufficient proof of service that the tenant was served with the landlord's application and evidentiary materials, including the USB, which is clearly shown in the photos. Accordingly, I find the tenant duly served with the landlord's application and evidence package. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2020, with monthly rent currently set at \$375.00, payable on the first of the month. The landlord holds a security deposit of \$187.50 for this tenancy.

The landlord filed this application on January 5, 2023 after a female tenant was allegedly assaulted by the tenant in the building on January 4, 2023. The landlord provided the details of the charges, which include assault, assault with a weapon, and uttering threats to cause death or bodily harm. A copy of the release document was submitted in evidence, as well as a photo of the victim. A copy of a critical incident report was submitted, which described the situation, as reproduced below (identifying information removed for privacy):

"At approximately 1710 a male tenant ran down to the front desk and informed staff that a female tenant was in another tenants room andwas beating her. Staff informed management who went up to the unit with officer 2676 and 3263 who were here to collect footage for an incident earlier in the day. When management and police arrived a male tenant was in the doorway of the unit screaming atget off of her!" and "stop it!". Police and management heard both the female tenant who was being assaulted screaming and another female tenant in the unit screaming, and what sounding like hitting noises. Police told the male tenant in the doorway to get out of the way and entered the unit and pulled out into the hall and handcuffed him, and read his rights. Both officers and management witnessed on top of the female tenant who was being attacked, before police pulled him out of the room. told police he didn't do anything wrong and police arrested and brought him outside into a police car. Management entered the unit and found the victim sitting on the bed crying with a bloody and swollen bottom lip. Management asked them what had happened and the victim told management (aka) had assaulted her by grabbing her by the throat and holding a metal crowbar against her lip. Management offered the victim medical attention and she refused. Management provided the victim a cold water bottle to hold to her lip and

gauze to clean up the blood. Police took photos of the injury and....was arrested for assault and brought to jail. Police file #..."

The landlord's agent, CG, testified that she was present on January 4, 2023 when a tenant came down to inform her that a tenant was being assaulted. CG attended the unit with the police, who happened to be on site, and witnessed the tenant on top of the victim. The landlord submitted video footage from that day showing the arrest of the tenant by the police. CG testified that there was an obvious assault of the victim, which justifies the immediate termination of this tenancy.

The tenant provided affirmed testimony of their version of the events that day. The tenant testified that the incident took place in his girlfriend, LF's, rental unit. The tenant testified that the alleged victim attended at LF's rental unit with a steel bar in her hand, and stated that someone had stolen her dog. The tenant testified that he had noticed the alleged victim had a fat lip. The tenant testified that the alleged victim started yelling at him, and attempted to hit the tenant twice with the steel bar. The tenant testified that they attempted to grab the steel bar from the alleged victim, and then the alleged victim tried to stab the tenant with an object. The tenant testified that the alleged victim had bitten him on the chest and spat in the tenant's face as well. The tenant testified that the police had arrived shortly, and the alleged victim provided a false statement about being assaulted. The tenant denies assaulting the alleged victim.

The tenant's girlfriend attempted to testify as a witness in the hearing, but the tenant's testimony was inaudible despite several attempts.

The landlord's agent testified that the alleged victim's dog was never stolen, and that another tenant had found the alleged victim's dog, which was returned to the alleged victim.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, 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.

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord

The landlord, in their application, is attempting to obtain an early end to tenancy as they feel that the tenant had conducted themselves in a manner that had caused serious harm to another tenant in the building. Neither party referenced any 1 Month Notices to End Tenancy For Cause for this incident or tenancy.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

In regard to the allegations of assault, I am not convinced that the landlord has provided sufficient evidence to support that 1) the tenant had indeed assaulted the alleged victim

and 2) that even if an assault did take place, the incident warrants the immediate termination of this tenancy.

Although it is undisputed that the tenant has been charged with assault, assault with a weapon, and uttering threats, I find that this evidence alone does not prove that the tenant has committed any illegal activity. Although the existence of a criminal charge does lend weight to this application, I find that in light of the evidence and disputed version of events before me, I find that the landlord failed to establish that the tenant had indeed assaulted the alleged victim.

It is undisputed that an incident did take place on January 4, 2023 inside the rental unit of the tenant's girlfriend. While the landlord did submit a video from that date, the video only shows the tenant being arrested by the police in the hallway, and the attendance of other parties at the rental unit where the alleged assault took place. The video does not show the tenant assaulting the alleged victim, or what happened prior to the attendance of the police. Furthermore, although there is a claim of assault by the alleged victim, and perhaps that other witness who went to inform CG of the incident, neither party appeared at the hearing to give affirmed testimony in this hearing, nor did they submit any statements. Rather, I find the tenant provided, under oath, a contrasting account the events that had taken place that day where the alleged victim attended the rental unit of the tenant's girlfriend, and initiated the altercation.

Lastly, I note that regardless of whether the assault had in fact taken place or not, I must still consider whether the evidence supports why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. I find that the allegations against the tenant have not been proven nor supported in evidence, and furthermore I am not satisfied that the landlord has provided sufficient evidence to support that the tenant is an immediate or ongoing threat to them or any other occupant in the building. I find that this application arises out of one incident, where the facts still remain unproven. I am satisfied that in the interim, the tenant is bound by no contact and no go conditions as set out by the courts, and which has consequences if the tenant were to breach these terms. I am not convinced that the tenant is an ongoing threat if this tenancy was to continue. For these reasons, I dismiss the landlord's application for an early end to this tenancy without leave to reapply.

Conclusion

I am not satisfied that the landlord has met the grounds required for an Order of Possession under section 56 of the *Act*. The landlord's application is dismissed without leave to reapply.

I order that this tenancy continue until ended in accordance with the *Act*.

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: January 25, 2023

Residential Tenancy Branch