



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET

Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for an order ending the tenancy early and to obtain an order of possession of the rental unit under section 56 of the Act.

The landlord and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Both parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

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 landlord confirmed that they did not include their evidence when they served an application package to one of the tenants. The landlord reasoned that the tenants would already have the evidence because it contained their emails.

As the evidence was not served to the tenants, I have excluded this evidence from review or consideration, apart from the “court order”, which I find necessary to consider as it will be mentioned in this Decision. The hearing proceeded on the landlord’s testimony as their evidence.

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 evidence shows this tenancy began on July 15, 2022 and monthly rent is \$1,300. Filed in evidence was the written tenancy agreement showing the landlord and the landlord’s spouse, SS, as landlords. The rental unit is in the lower unit of a home owned and currently occupied by the landlord.

In the landlord’s application, the landlord writes as follows:

Tenants has maintained contact with my husband that assaulted me on March 26,22 and also on March 8,23 and has resulted in my husband having a NO Contact order directly or indirectly with myself. Tenant in contact with my husband and making the Landlord (staying in property)feeling unsafe and compromising Landlord security and putting the Landlord in endangerment. The tenant has broken a material term by providing a letter to my husband to use in court which has slanderous and defamation Landlo

[Reproduced as written]

The landlord testified to the following:

The tenants are in constant contact with their husband, SS, who is under a no-contact order after the landlord filed assault charges against SS. Contacting SS is unacceptable and they do not feel safe in their own home. SS is not be informed of what is going on their home and they feel invaded in their own home because of the tenants' contact with SS.

In response to my inquiry, the landlord confirmed that they knew the tenants contacted SS by email, which they discovered when they logged onto SS's email account. The landlord explained that they set up SS's email account and therefore knew the password to log on. Additionally, the landlord confirmed knowing SS's call log on their mobile phone as the account is in the landlord's name.

Although excluded, there was information at the hearing the landlord served the tenants a 1 Month Notice to end the tenancy.

In response, the tenants filed a written statement, which is reproduced in part as follows:

(tenant first names) made a report with Constable (****) on March 20th after receiving threatening text messages from (landlord first name). Constable (****) called (landlord first name) on the phone that evening to let (landlord first name) know to stop contacting (tenant first names), as it will be considered harassment. (landlord first name) did not follow what Constable (****) had advised her, and she continued to treat (tenant first names) with malice. (tenant first name) sent an email to Constable (****) explaining that (landlord first name) had ignored the officer's warning, but was not responded to, so (tenant first names) let it go in hopes that (landlord first name) would leave them alone.

12-12:30am(March 21st, the morning after Constable (****) called (landlord first name)) (landlord first name) stomped loudly and vacuumed over their heads waking (tenant first names) up, as in result they both didn't sleep well. We wake up at 5am to get ready for work- shift starts 6am. Following up in the morning at 11:07am (landlord first name) began to bother (tenant first name) at work(We work with glass and saws) via text saying that we:

....

(landlord first name) claims in the eviction notice that (tenant first names) are slandering (landlord first name)'s name and for defamation; over a witness statement my partner and I sent to a PRIVATE email (SS)'s) which was NEVER published publicly, regarding to what we believe was domestic violence (between (SS) and (landlord first name) on January 27@ 11:30pm) we heard from our suite downstairs.

(landlord first name) illegally intercepted the email that was only for (SS) and his legal team to see, since then (landlord first name) has been harassing (tenant first names) and has been treating them uncivilly and with extreme prejudice and since October 2022 and even more now.

*(landlord first name)'s other reason for the evictions is she "feels unsafe," yet, we have not done anything that would make her feel that way- (tenant first names) mind their own business and are home bodies that just want to be left alone in peace. (tenant first names) are quiet and respectful to those around us- we don't make noise past bylaw and respect the quiet enjoyment act in consideration for others.

*We only wrote a witness statement based on what we heard on the January 27th. The witness statement was asked of (SS), (SS) texted (tenant first name) "what did you hear" and gave us his email address.) (SS) even gave (tenant first names) his personal email so they could write a witness statement so (SS) could give it to his lawyer(but was intercepted by (landlord first name) without (SS)'s permission) again, sent to a private email and never posted publicly. It is our right to say something, abuse isn't done in secret. (tenant first names) were very disturbed that night.

*Since October 2022, we have been instructed by (SS), our other landlord, to only speak to him after the incident with (landlord first name) trying to wrongfully kick us out- (SS) tried to keep the peace between us all. That is why (tenant first names) remained in contact with him, (SS) dealt with them. (SS) even messaged (tenant first name) on March 5, 2023 asking us to move our cars up more (SS) wasn't living at his home at the time) and (tenant first names) complied immediately. Since (landlord first name) and (SS) have a no contact order, communications with Sam are more in the dark, (landlord first name) has resumed her issue since September 2022 and even more (tenant first names)feel they are being blamed by (landlord first name) for animal control being called on their house for excessive dogs barking all hours on the night keeping people in the neighborhood up. (tenant first names) did NOT report the dogs, they minded their own business.

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenants' testimony mentioned many of the statements above and in addition, they heard a domestic dispute upstairs between the landlords on January 27, 2023. The tenants denied recording the landlords, only that they have a camera for their own rental unit, pointed away.

SS asked them for a witness statement, they did not contact SS on their own.

Filed in evidence were text messages between the landlord and tenants, a timeline of events, backed by text messages, tenant DR's call logs, and a phone list of contacts.

One text message from the landlord to the tenant stated the following: "For the letter!! I will go after you guys! I can loose the house but I will put you on your place".

Two more text messages from the landlord to the tenants stated the following: "Is never a good day when I have to tolerate 2 back stabbers under MY ROOF!!!" and "July 15 is coming and can't wait to see you BOTH GONE!".

I also note the parties spent a large part of the hearing dealing with a disagreement with a garbage and recycle bin for the premises.

Analysis

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

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

Section 56 (2) of the Act applies and states 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).*

In this case, I find the landlord submitted insufficient evidence to support their application. I have reviewed the court order filed by the landlord, as noted above, I made an exception to the otherwise excluded landlord's evidence.

The relevant condition for release given to SS, states as follows: *"You must have no contact or communication, directly or indirectly, with (landlord name). The exceptions are: during one attendance, with a peace officer to get your personal belongings".*

This court order pertains to SS, not the tenants and I find it is therefore not relevant to this proceeding. I find the landlord has submitted insufficient evidence of any breach by the tenants, much less a very serious breach. I find the evidence shows that SS contacted the tenants by email asking for a witness statement. This request pre-dated the court order with conditions of March 9, 2023.

The only reason the landlord even knew of this email from February 2, 2023 was because the landlord went into the personal email account of SS and looked at their private emails.

The basis of the landlord's application was the allegation the tenants have maintained contact with SS, who is also one of the tenants' landlords. I find the landlord has submitted insufficient evidence of continuing contact, however, even if that were the case, I find the tenants have the legal right to contact their landlord.

Having reviewed the text messages from the landlord to the tenants, I do not accept the landlord's statement that they feel unsafe, as I find the landlord's text messages to the tenants to be aggressive.

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.

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.

I note that a large amount of evidence from both parties involved a dispute over a garbage and recycle bin. The parties were informed that I would not end the tenancy in this application for a disagreement about bins.

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 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 21, 2023