



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MONTEGO APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, CNC

Introduction

The Landlord filed an Application for Dispute Resolution on May 24, 2023 seeking an order to end the tenancy on the basis that the Tenant poses an immediate and severe risk to the property, or occupants, or the Landlord. The matter proceeded, as scheduled by the Residential Tenancy Branch, by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 26, 2023. In the conference call hearing, I explained the process and provided the parties with the opportunity to ask questions.

Both the Landlord and the Tenant attended the hearing. I provided both parties the opportunity to present oral testimony and make submissions during the hearing.

Regarding this Application from the Landlord, they stated they provided the hearing information, as well as their prepared evidence, to the Tenant in person on May 26. The Tenant confirmed this.

Preliminary Matter – subsequent Tenant application

The Tenant filed a separate Application at the Residential Tenancy Branch to dispute a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) served by the Landlord on May 11, 2023.

For evidence in this present hearing, the Tenant provided a copy of the Notice of Dispute Resolution Proceeding they received from the Residential Tenancy Branch for a subsequent scheduled hearing, set for September 8, 2023. In evidence for this hearing, the Tenant also provided a postal record showing that they sent the document to the Landlord via registered mail on May 19, 2023.

I stated to the parties that I would consider hearing this separate matter by joining that separate Application to the present Landlord's Application. On my review, the registered mail sent by the Tenant on May 19, 2023 was not delivered as of the date of this hearing. The Tenant in the hearing acknowledged that "it hasn't reached to the Landlord yet", and "it's still in transit".

Because the registered mail notifying the Landlord of that separate process was not delivered, I find it would be prejudicial to the Landlord to hear that matter joined to this present Application. The Landlord did not have the opportunity to provide any evidence they need to rely on in that separate hearing; therefore, it would be prejudicial to the Landlord to hear that matter joined to this one. Similarly, the Landlord was not aware that the separate end-of-tenancy matter would be joined to this present Application and did not have the chance to review. It would be a different situation had the Landlord been informed fully and given the chance to provide evidence for that separate hearing; however, as the situation stood at the time of this June 26 hearing, they did not have that opportunity, and it would be prejudicial to them if I made a decision in a process where they were not afforded the opportunity to provide evidence.

Issues to be Decided

- Is the Landlord entitled to an early end to this tenancy, as per s. 56 of the *Act*?

Background and Evidence

The Landlord described the incident of May 2, 2023, reported to the Landlord by one other rental unit property resident. That resident advised the Landlord of police presence.

The Landlord arrived at the rental unit property at the time of the incident and observed the Tenant's family member in handcuffs. They were aware the police had to subdue that Tenant's family member with the use of a taser.

The Landlord described this Tenant's family member making threats to other building residents previously. The Landlord also described this family member as accessing the Tenant's first-floor rental unit via balcony

The Landlord referred to two separate police files, with the second referring to a separate incident involving this same Tenant's family member, involving a taxi. This separate incident

occurred approximately two weeks after the incident at the rental unit property, after that family member's stay in the hospital. The Landlord described this separate incident because it presented a "grave concern" to other rental unit property residents.

To summarise their position in this matter, the Landlord stated that they made a judgment in call in choosing to bring this application for an early end to tenancy, because of the Tenant's family member's own statement that they can be "extremely dangerous" and based on other building residents' claims to the Landlord. The Landlord noted "at least 10 other residents" making claims to the Landlord, "with many of them observing" the particular incident of May 2.

As stated by the Landlord in the hearing: "if anyone gets hurt or the building is damaged because of the [Tenant's family member], the Landlord would be responsible."

In their evidence to the Residential Tenancy Branch, the Landlord provided one separate notification to them from a building resident. The Landlord verified in the hearing that they did not provide this piece to the Tenant for this hearing.

The Tenant made the following points in the hearing:

- their family member was living in the building sometime previously
- this family member has never hurt the Tenant personally in any way; therefore, the Landlord's concern about the Tenant's own safety is irrelevant
- the Landlord wants to end this long-standing tenancy in order to raise the rent for this rental unit with new tenants
- at the time of the incident in question, an ambulance attended and took their family member for assistance; if the family member was arrested, it would have been a different scenario – on that date, their family member "got into some sort of drug" that interfered with their medication
- the Tenant's family member was known to other residents and had helped them in the past; after the incident, five other residents asked about the Tenant's family member's own well-being
- the other incident involving a taxi and the Tenant's family member is entirely separate and happened far away from the rental unit property.

The Tenant reiterated that during the incident in question, there was no harm or threat to other building residents. The Landlord did not bring any other resident to testify in this hearing. There is insufficient evidence of a threat overall, with the Tenant's family member noted as being "under treatment". That family member has not returned to the rental unit property after the incident.

Analysis

The letter from one resident to the Landlord that the Landlord provided to the Residential Tenancy Branch for this hearing does not receive my consideration. It would be fundamentally unfair for me to refer to that letter in any way without giving the Tenant the chance to review that material in full.

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end tenancy were given under s. 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.

The *Act* s. 56(2) follows with two criteria. First, as per subs. (1) a landlord must provide the cause for issuing the Notice. Additionally, the evidence must show, as per subs. (2), it would be unreasonable or unfair to a landlord to wait for a set period Notice to End Tenancy to take effect under a different s. of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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 . . .

The letter from one resident to the Landlord that the Landlord provided to the Residential Tenancy Branch for this hearing does not receive my consideration. It would be fundamentally unfair for me to refer to that letter in any way without giving the Tenant the chance to review that material in full.

In the hearing, the Landlord described the incident in question; however, aside from receiving calls from other residents about the incident on May 2, the Landlord did not provide first-hand direct knowledge of the events. The Landlord referred to other residents' calls and concerns to them; however, these are not specifically noted, in terms of the number of calls or concerns to the Landlord directly, nor the content, even if described generally. Such as the evidence from the Landlord stands, I am not satisfied that a significant number of residents notified the Landlord about the incident, or otherwise stated concerns to the Landlord regarding their own safety, or that of the property.

The Landlord brought their knowledge of another incident involving the Tenant's family member in their testimony. The Tenant provided information that runs counter to that, by stating that a separate incident not occurring anywhere near the rental unit property should not be a concern. I find the other incident is sufficiently distinct and separate and does not relate to the other building residents – particularly where the Landlord is relying on information about threats or other dangers to residents – nor the rental unit property where it was separate and distinct. The Landlord pointed to this separate incident as a pattern of behaviour on the part of the Tenant's family member; however, I find the evidence is not there to show, on a balance of probabilities, that this other separate incident reveals conduct that would be a threat or risk of harm to other building residents.

In sum, the Landlord described other residents' concerns; however, they did not provide ample evidence of that communication to them, neither dates, nor content, nor any number of logged claims. Any description of the incident in question is not specific enough in content from the Landlord to prove that, more likely than not, there was significant interference or unreasonable disturbance to other residents. The Tenant provided a description running counter to that of the Landlord that sets out their family member was in medical distress; I find that scenario is at least equally plausible where the Landlord did not provide specific information.

As well, the Tenant stated that their family member has not returned to the rental unit property since the incident. The Landlord did not provide any evidence to show otherwise. I find this is

not a situation where there is a jeopardy to health or safety, nor a risk to the Landlord's property, minus sufficient evidence showing that.

An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant. This method of ending the tenancy is for serious and immediate risk of danger; I do not find that to be present in this case. I find that the testimony presented by the Landlord does not show this to be the case.

I find the Landlord has not proven there is reason to apply for an order that ends the tenancy early by application of s. 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a s. 47 notice to end tenancy.

Conclusion

I find the Landlord's testimony does not show the Tenant's or their guests' actions are an immediate and severe risk to the property or the Landlord. I dismiss this Application from the Landlord for an early end of tenancy and an order of possession for the rental unit, without leave to reapply.

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

Dated: July 3, 2023

Residential Tenancy Branch