



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **ET**

Introduction

This hearing was convened by conference call as a result of the Landlord's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act) for an early termination of the tenancy and an Order of Possession pursuant to section 56 of the Act.

The Landlord's agents (ED, JK, MB and JB), the Tenant and the Tenant's advocate (SW) attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

ED stated the Landlord served the Notice of Dispute Resolution Proceeding and its evidence (NDRP Package) on the Tenant's door on May 30, 2023. ED submitted into evidence a copy of a signed and witnessed Proof of Service on Form RTB-9 to corroborate his testimony on service of the NDRP Package on the Tenant's door. SW acknowledged the Tenant received the NDRP Package. As such, I find the NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act.

SW stated the Tenant served his evidence on the Landlord's door on June 28, 2023. ED acknowledged the Landlord received the Tenant's evidence. As such, I find the Tenant's evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

Issue to be Decided

- Is the Landlord entitled to an early end to the tenancy pursuant to section 56 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

ED submitted into evidence a copy of a tenancy agreement, dated October 5, 2020, between the parties. The parties agreed the tenancy commenced on October 1, 2020, on a month to month basis, with rent of \$710.00. The parties agreed the rent is now \$734.00 per month. Based on the above, I find there is a residential tenancy between the parties and that I have jurisdiction to hear and adjudicate the Application.

ED stated the Landlord was seeking an early end to the tenancy on the basis that the Tenant, or other person permitted on the residential property by 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 lawful right or interest of the landlord or another occupant
- put the Landlord's property at significant risk

ED stated this was an ongoing situation. ED stated the Tenant was recently in the hospital for one month and the Landlord could not contact him. ED stated there were three basis reasons the Landlord was seeking to end the tenancy early:

Firstly, there are three or four other occupants of the residential premises who have known the Tenant for over a decade. ED stated the other occupants have told the Landlord that the Tenant suffers from substance abuse and alcoholism. ED stated the Tenant was in hospital for two months in 2020. ED stated the Tenant was found unconscious after falling down the stairs to the residential property on May 6, 2023. ED stated this was not the first time that the Tenant has been found intoxicated in the residential premises. ED stated that on June 16, 2023, the fire alarm system was set off

at 2:00 am as a result of smoke in the upper floor hallway. ED the Tenant refused to vacate the residential premises. ED admitted there was no evidence the Tenant was responsible for the causing the smoke and activation of the fire alarm. ED stated the other occupants say told the Landlord that they can no longer support the Tenant anymore, particularly as there is not elevator in the building. ED did not provide any witnesses statements or call any of the other residents of the building to corroborate his testimony.

Secondly, ED stated the Tenant left the stove on while he was not at home. ED stated the Tenants rental unit is cluttered and there are flammable materials near the stove. ED submitted into evidence photos of the rental unit to show the condition of the rental unit and the degree of clutter in it. ED stated the rental unit is not kept clean and there is an unpleasant odour in the rental unit that spills out into the hallway. ED stated the Tenant's behaviors results in a high degree of danger to the other occupants and to the residential building. ED stated the Landlord and other occupants are concerned that the Tenant will cause a fire and that the Landlord's insurance may not cover damages to the building. ED did not provide any witness statements, call any witnesses to demonstrate the concern the other occupants have regarding the Tenant or to demonstrate the Landlord's insurance would be void in the event of a fire caused by the Tenant.

Thirdly, ED stated the Tenant has copied the keys to the front door and rental unit without the Landlord's permission and given the keys to third parties. ED stated that other occupants of the residential property are fearful for their safety as a result of entry of third parties into the residential premises and the rental unit. ED stated that, as a result of the Tenant giving keys for the entrance to third parties, the Tenant has put the safety of the other occupants of the building at serious risk. The Landlord did not provide any witness statements or call any witnesses, to corroborate his testimony that the Tenant has made and given keys for the entrance of the building to third parties or how the activities of the third parties are jeopardizing the health or safety of the other occupants of the residential property or how they are putting the Landlord's property at risk.

SW stated he was unconscious in the lobby of the residential premises. SW stated the Tenant normally uses the microwave to heat his meals and rarely uses the electric range. The Tenant stated he does not have difficulty going up and down the stairs in the residential property. The Tenant admitted the photographs submitted by the Landlord are of his rental unit but stated he has been working on decluttering his rental unit. SW stated the Tenant is now receiving home care services on a daily basis.

ED reasserted his evidence that the Tenant was found unconscious at the bottom of the stairs and disputed the Tenant's testimony that he was found in the lobby.

When I asked, ED stated that none of the other occupants were willing to provide witness statements or to give oral testimony at this hearing as they were concerned about their safety.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

The conditions that must be met for a tenancy to be ended early are set out in subsections 56(2) and (3) as follows:

Application for order ending tenancy early

- (2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that
 - (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, 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.
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

[emphasis in italics added]

Residential Tenancy Branch Policy Guideline Number 51 [Expedited Hearings] (“PG 51”) provides guidance on a landlord’s application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of PG 51 are relevant to the Landlord’s application:

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

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 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).

ED stated other occupants of the residential property have told the Landlord that the Tenant suffers from substance abuse and alcoholism. ED stated the Tenant was found unconscious at the bottom of the stairs of the residential property on May 6, 2023. The Tenant stated he was in the lobby of the residential property when he was found. The Tenant stated he is able to go up and down the stairs to get to his rental unit. Based on the foregoing, I find this recent incident alone does not justify a finding of cause to end the tenancy pursuant to subsections 56(2)(i) or 56(2)(ii) of the Act.

ED stated the Tenant refused to vacate the rental unit after the fire alarm system was activated on June 16, 2023. The Landlord did not provide any evidence the Tenant caused the fire alarm to be triggered. Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that this incident alone justifies a finding of cause to end the tenancy pursuant to subsections 56(2)(a)(i), 56(2)(a)(ii) or 56(2)(a)(iii) of the Act.

ED stated the Tenant left the stove on while he was not at home. ED stated the Tenant's rental unit is cluttered and there are flammable materials near the electric stove. ED submitted into evidence photographs of the rental unit to show the degree of clutter in the rental unit. ED stated the Landlord and other occupants are concerned that the Tenant will cause a fire. SW stated the Tenant mostly uses the microwave to heat his meals and rarely uses the electric stove. SW stated the Tenant now has home support on a daily basis. ED did not provide any witness statements, call any witnesses to corroborate his testimony on the concerns of the other occupants. ED also stated the Landlord has concerns regarding whether the Landlord's insurance will cover any loss from fire to the Landlord's property caused by the Tenant. ED did not provide any witness statements, or call any witnesses, or provide testimony that the Landlord's insurance would be void if the Tenant caused a fire. Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that the Tenant has breached either subsections 56(2)(a)(ii) or 56(2)(a)(iii) of the Act.

ED stated the Tenant is not keeping the rental unit clean and there is an unpleasant odour in the rental unit that spills out into the hallway. ED stated the Tenant's behaviors results in a high degree of danger to the other occupants and to the residential building. I have examined the photos provided by the Landlord and find that the Tenant has not maintained reasonable health, cleanliness and sanitary standards throughout the rental unit as required by the provisions of subsection 8(2)(a) of the Act. As such, I have Landlord has proven, on a balance of probabilities, that the Tenant has breached section 56(2)(a)(ii) of the Act by jeopardizing a lawful right or interest of the Landlord that the rental unit be maintained in the manner required by section 8(2)(a) of the Act.

However, I find that the Landlord have not proven, on a balance of probabilities, that the Tenant's breach of 56(2(a)(ii) of the Act is sufficiently urgent to warrant an early termination under section 56(3) of the Act, as contemplated by PG 51. As such, I find it would not 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 of the Act to take effect.

ED stated the Tenant has copied the keys to the front door of the residential property and to the rental unit, without the Landlord's permission, and given the keys to third parties. ED stated other occupants of the residential property are fearful for their safety as a result of this. ED argued the Tenant has put the safety of the other occupants of the building at serious risk by permitting third parties access to the building. ED did not provide any witness statements, or call any witnesses, to corroborate his testimony that the Tenant has made and given keys for the entrance of the building to third parties and, if so, how the activities access by third parties has jeopardized the health or safety of the other occupants of the residential property. Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that the Tenant has breached subsections 56(2(a)(i), 56(2(a)(ii) or 56(2(a)(iii) of the Act.

Based on the above, I find the Landlord has not established cause under subsections 56(2(a)(i) or 56(2(a)(iii) of the Act. Although I have found the Landlord has proven cause to end the tenancy under subsection 56(2(a)(ii) of the Act, I not satisfied the Landlord has proven, under section 52(2)(b) of the Act, that it would not 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 of the Act to take effect. Accordingly, I find the Landlord has not established it is entitled to an early end to the tenancy pursuant to section 56 of the Act. As such, I dismiss the Application without leave to reapply.

Conclusion

The Application is dismissed without leave to reapply.

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: July 3, 2023

Residential Tenancy Branch