



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET and OPC

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause and for an early end to the tenancy.

The Agent for the Landlord stated that on January 23, 2014 the Application for Dispute Resolution, the Notice of Hearing, and five photographs were mailed to the Tenant, via registered mail, at the rental unit. The Agent for the Landlord cited a tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

The Landlord submitted 5 photographs to the Residential Tenancy Branch. I note that the Landlord did not submit a copy of the Notice to End Tenancy that is the subject of these proceedings to the Residential Tenancy Branch.

Issue(s) to be Decided

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

Background and Evidence

The Agent for the Landlord stated that this tenancy began on June 01, 2013 and that the Tenant was served with a One Month Notice to End Tenancy for Cause on January 05, 2014, which declared that the Tenant must vacate the rental unit by February 06, 2014.

The Agent for the Landlord stated that the Landlord wishes to end this tenancy early because the Tenant has not paid rent, because he believes the Tenant is currently

incarcerated, because he believes the Tenant may have abandoned the rental unit, and because the Tenant has an excessive number of boxes in the rental unit.

Analysis

Section 47 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons, providing the landlord serves the tenant with an effective One Month Notice to End Tenancy for Cause.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant was served with an effective One Month Notice the End Tenancy for Cause. In reaching this conclusion I was heavily influenced by the fact that the Landlord did not provide the Residential Tenancy Branch with a copy of the Notice to End Tenancy that is the subject of this proceeding. Without viewing the Notice to confirm it is effective and in the absence of the Tenant who may have been able to confirm the content of the Notice, I am unable to grant an Order of Possession on the basis of this Notice.

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act*. Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord

- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(a) of the *Act* does not permit me to end a tenancy early because the Tenant has not paid rent, because the Tenant is incarcerated, or because the Tenant may have abandoned the rental unit. I therefore dismiss the Landlord's application to end the tenancy early for these reasons.

In some circumstances, keeping an excessive amount of property in the rental unit could be cause to end a tenancy in accordance with section 56 of the *Act*.

Section 56(2)(b) if the *Act* authorizes me to end a tenancy early only if 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 to take effect.

I find that the Landlord has submitted insufficient evidence to show that the tenancy should be ended early as a result of excessive property being stored in the rental unit. In reaching this conclusion, I am guided by section 56(2)(b) of the *Act*, which stipulates that a tenancy should only be ended early if it is 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. In these circumstances, I am not satisfied that it would not be reasonable to expect the Landlord to proceed in accordance with section 47 of the *Act*.

In determining that it would not be unreasonable for the Landlord to wait to end this tenancy in accordance with section 47 of the *Act*, I was heavily influenced by the absence of evidence from a professional, such as a report from a fire inspector or building inspector, that shows the amount of the property in the unit poses a significant safety hazard or that it places the Landlord's property at imminent risk. In the absence of proof of imminent danger, I find that it is reasonable to expect the Landlord to end the tenancy in accordance with section 47 of the *Act*.

Conclusion

The Landlord's application for an Order of Possession is dismissed. As I have not determined the merits of the One Month Notice to End Tenancy that was served to the Tenant, the Landlord retains the right to seek another Order of Possession on the basis of this Notice. 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: March 10, 2014

Residential Tenancy Branch

