



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LLA INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") to end the tenancy early and obtain an Order of Possession.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance by the Tenants during the hearing or any submission of written evidence prior to the hearing.

As the Tenants failed to appear for the hearing, I turned my mind to the service of the Application and Notice of Hearing documents (the "hearing package"). The Landlord's agent testified that the hearing package and a copy of the written evidence was served to each Tenant by registered mail on June 25, 2014 pursuant to Section 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Landlord provided a copy of the Canada Post tracking numbers as evidence for this method of service.

Section 90(a) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail and this cannot form the basis of a review application. Based on the deeming provisions of the Act and the Landlord's agent's written and verbal evidence, I find that the Tenants were served with the hearing package by the Landlord in accordance with the Act.

The hearing continued and the undisputed evidence of the Landlord was carefully considered in this decision.

Issue(s) to be Decided

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

Background and Evidence

This tenancy of a rental unit in a residential building started on June 1, 2010 on a month to month basis. A written tenancy agreement was completed and provided as written evidence for the hearing. The Tenant paid \$292.50 as a security deposit at the start of the tenancy and rent is payable by the Tenant in the amount of \$585.00 on the first day of each month.

The Landlord's agent testified to the following evidence during the hearing.

The local fire service completed a random inspection in April, 2014 of the rental unit during which it came to their attention that several units in the residential building were not in compliance with the fire codes.

The Landlord provided an "Order to Comply" document issued to the Landlord by the fire service in which it lists all of the residential units that were not in compliance with the fire regulations. One of the units named in the document is the Tenants' rental unit. The document goes onto detail the violation caused by each unit and the corrective action required. In relation to the Tenant's rental unit, the document explains that the rental suite is missing or has broken smoke alarms and notes that fire staff saw the occupants of the Tenants' rental suite "all smoking/drug addicts/crack shack".

The Landlord's agent explained that they have a large drug problem in the building and they are making diligent efforts to clean it up by complying with the fire service's instructions. As a result, the Landlord was required to do daily fire inspections of the rental units identified on the compliance document, including the Tenant's rental unit.

The Landlord's agent testified that he has inspected the Tenants' rental suite on a daily basis and during every inspection, the Tenants have either removed the smoke alarm, damaged it or disposed of it. The Landlord's agent testified that he has given the Tenants plenty of verbal warnings not to interfere with the smoke alarms as they form part of the safety of the building; however, the Tenants continue to damage the smoke alarms.

It was suggested in the hearing that the smoke alarms may be interfered with by the Tenants to avoid detection of drug activity and smoking inside the rental suite which is not permitted.

The Landlord's agent fears for the safety of other residents and the building as well as repercussions from the fire service as a result of inaction and therefore seeks an

immediate Order of Possession as the interim time period for a notice to end tenancy to take effect may lead to a serious incident and risk of injury to residents and serious damage to the building.

The Landlord also provided a typed letter from the Deputy Fire Chief as written evidence which states:

“The following tenants have continually put their lives and the lives of other occupants in this building at risk by removing or tampering with their smoke alarms.”

The letter then continues to name the Tenants’ rental suite as being one of the above Tenants. The letter then concludes with the following:

“Fire Services supports landlord’s request to end a tenancy without full notice as the tenant or the tenant’s guests have seriously jeopardised the safety and interests of the landlord, other occupants and firefighters by removing their smoke alarms.”

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the Landlord when the circumstances of the tenancy are such that it is unreasonable for a Landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause.

Section 56(2) of the Act details the circumstances under which an arbitrator may end the tenancy early as follows:

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;

Section 56(3) of the Act explains that if an Order of Possession is granted under this Section of the Act, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

I am satisfied, on the balance of probabilities, by the oral testimony of the Landlord's agent as well as the compliance order and letter from the Deputy Fire Chief, that the Tenants have created the circumstances as outlined above, namely putting the Landlord's property at significant risk of damage and serious harm to others residing and working in the building.

I accept the Landlord's evidence and I find that it would be unfair for the Landlord to wait for the effective date of a notice to end tenancy for cause, and that the tenancy should end early. Therefore the Landlord is entitled to an immediate Order of Possession, pursuant to Section 56(1) of the Act.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental suite.

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 08, 2014

Residential Tenancy Branch

