



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession. Although served with the Application for Dispute Resolution and Notice of Hearing when it was posted to the door of the rental unit on November 6, 2014, the tenant did not appear.

Issue(s) to be Decided

Is the landlord entitled to an order of possession and, if so, on what terms?

Background and Evidence

This is the landlord's third attempt on an application for an order ending the tenancy early. The first hearing on the identical application was scheduled for September 25, 2014. It appears from the decision that there was some confusion about arranging for a witness and whether the landlord should call back into the conference. The end result was that the landlord's application was dismissed with leave to reapply.

A second application for same relief was scheduled for October 10, 2014. The decision from that hearing notes that no one appeared at the hearing and the application was dismissed with leave to re-apply.

The landlord applied for a review of that decision. The Review Decision stated that although the record showed there was an attempt by the landlord to call into the hearing the circumstances were such that the original decision could not be set aside.

The landlord then filed this application for dispute resolution still asking that the tenancy be ended and an order of possession be granted.

This month-to-month tenancy commenced May 15, 2014. The monthly rent of \$500.00 is due on the 15th day of the month. The landlord collected a security deposit of \$250.00.

The rental unit is one of two suites located on the lower level of a house. The landlord, who is 63 years old, lives on the upper level.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on August 12, 2014. The effective date of that notice was September 14, 2014. The landlord subsequently served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent. The effective date of that notice was September 8, 2014. The tenant has not filed an application disputing either of the notices to end tenancy.

As a result of certain episodes in September the landlord filed his first application for an order ending the tenancy before the effective date of the notices to end tenancy. As detailed above, the effect of various procedural difficulties has been that this application was filed after the effective date of both notices to end tenancy.

The landlord testified that the tenant is usually drunk or high on drugs. The tenant has threatened the landlord on more than one occasion; once with a knife. The police have attended at the home on four occasions in September and kept the tenant overnight twice. According to the landlord the tenant's behaviour has been better since September; he thinks the police told the tenant he had used up his last chance.

The tenant has not paid any rent since August 15. Some of the occasions on which the landlord has been threatened have been when the landlord asked the tenant for the rent. The tenant told the landlord he will not pay the rent or move out and nobody can do anything.

Analysis

Section 56 of the *Residential Tenancy Act*, the section under which this application is made, allows an arbitrator to grant a landlord an order of possession earlier than the tenancy would end if the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause if satisfied that:

the tenant has done any of the serious actions listed in subsection 56(2)(a); and, it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a 1 Month Notice to End Tenancy for Cause to take effect.

Section 47(5) provides that if a tenant who has received a 1 Month Notice to End Tenancy for Cause does not file an application disputing the notice within the required time the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the unit by that date.

Section 46(5) applies a similar presumption to a tenant who has been served with a 10 Day Notice to End Tenancy for Non-Payment of Rent and has not filed an application to dispute it within the required time.

Section 55(2)(b) allows an arbitrator to grant an order of possession to a landlord when the tenant has been served with a notice to end tenancy, the tenant has not disputed the notice, and the time for making that application has expired.

Although the landlord could have applied for an order of possession pursuant to section 55 by the time he filed this application for dispute resolution (and in fact, that would have been the simpler and more correct procedure), he persisted in his efforts to obtain an order pursuant to section 56(2). This was probably the result of the previous procedural difficulties and his understanding of the advice he received from the Residential Tenancy Branch.

Although section 56 sets out the circumstances which must exist before an order of possession can be granted on a date earlier than the tenancy would end if the tenant were served with a 1 Month Notice to End Tenancy for Cause it does not explicitly prohibit the granting of an order of possession after that date if the conditions set out in section 56(2)(a) have been met.

Based on the evidence before me I am satisfied that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant; and 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, or
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

thereby meeting the criteria set out in section 56(2)(a).

Based on the reasoning above I find that the landlord is entitled to an order of possession effective two days after service.

Conclusion

1. An order of possession effective two days after service has been granted to the landlord. If necessary this order may be filed in the Supreme Court and enforced as an order of that court.
2. As the landlord has been successful on this application he is entitled to reimbursement from the tenant of the \$50.00 fee he paid to file this application. Pursuant to section 72(2)(b) this amount may be deducted from the security deposit held by the landlord.

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: November 25, 2014

Residential Tenancy Branch

