



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 the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an early end to this tenancy and an order of possession pursuant to section 56; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord and tenant were assisted by their respective advocates. The landlord elected to call one witness, JS.

Neither party raised any issues with service of documents.

Prior Applications

This tenancy has been the subject of four prior applications by the parties. The file numbers and hearing dates are listed on the covering page of this decision.

In the First Application the tenant sought, among others, to cancel a 1 Month Notice to End Tenancy for Cause. The tenant was successful in her application.

In the Second Application the tenant sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use. The tenant was successful in her application.

In the Third Application the tenant sought, among others, compensation for loss of services. The tenant was successful in her application and awarded compensation in the amount of \$200.00. The landlord was also ordered to make certain repairs.

The Fourth Application heard was in respect of cross applications by the tenant and landlord. The tenant sought cancellation of a second 2 Month Notice to End Tenancy for Landlord's Use. The landlord sought an order of possession on the basis of that notice. The tenant was successful and the landlord was unsuccessful. The landlord sought review of the decision in the Fourth Application pursuant to section 79 of the Act. The landlord was not successful in her application for review. I understand that there is a judicial review filed in respect of this decision.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the witnesses, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began on or about 27 August 2011. Monthly rent of \$750.00 is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$375.00, which was collected at the beginning of this tenancy. There is no written tenancy agreement, although I was provided with a Shelter Information form from the Province that details the terms of the tenancy.

The landlord testified that she provided five notices to enter the rental unit:

- The first notice was provided 12 November 2015. The notice was served by posting to the tenant's door for an entry scheduled 13 November 2015. The real estate agent and others attended at the unit that day to enter the unit. The tenant denied access and said that she was ill.
- The second notice was provided 24 November 2015. The notice was served by posting to the tenant's door for an entry scheduled for 26 November 2015. The

landlord's agent attended that day and knocked on the tenant's door. The tenant did not answer the door. The agent did not enter or attempt to enter.

- The third notice was provided 1 December 2015. This notice was posted to the tenant's door on 1 December 2015 for an entry scheduled for 2 December 2015. The tenant did not answer the door.
- The fourth notice was provided 9 December 2015. This notice was posted to the tenant's door for entry on 20 December 2015. The tenant did not answer the door.
- The fifth notice was provided 27 December 2015. This notice was posted to the tenant's door for entry on 28 December 2015. The tenant did not answer the door. The landlord attempted to call the tenant, but the tenant did not answer her telephone. The landlord did not enter.

The landlord testified that she is extremely concerned with her ability to sell the residential property. The landlord testified that a prior offer for purchase was not able to complete because the tenant did not allow an appraiser in so that the purchaser could secure financing. The landlord testified that the current offer for purchase of the property is subject to vacant possession of the residential property including the rental unit. Further, the price of the residential property is not yet settled because the prospective purchasers have not yet viewed the rental unit.

The landlord testified that it is urgent that she secure possession of the rental unit because the real estate market is "hot" and she does not want to lose out on a sale. The landlord testified that she is worried this offer will fall through.

JS provided testimony that corroborated the landlord's testimony.

The tenant testified that she did not admit the landlord or her agents because the landlord had not provided proper notice.

Landlord's Submissions

The landlord relies on subparagraph 56(2)(a)(ii) of the Act. The landlord submits that notice was provided on a timely basis and in accordance with the Act.

Tenant's Submissions

The tenant denies that she is attempting to prevent the sale of the residential property.

The tenant submits that the landlord did not give notice in accordance with the Act. In particular, the tenant submits that the landlord did not adhere to the deeming provisions for service set out in paragraph 90(c) of the Act. The tenant expects the landlord to adhere to the provisions of the Act and provide proper notice of entries. The tenant submits that the landlord's own evidence shows that she has not provided proper notice.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property;
 - 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;
- caused extraordinary damage to the residential property.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

In this case the landlord submits that she is entitled to an early end to tenancy on the basis of subparagraph 56(2)(a)(i) of the Act as the tenant is not providing access to the rental unit for inspections by purchasers and appraisers.

Subsection 29(1) of the Act addresses a landlord's right to enter a rental unit. It states that a landlord must not enter a rental unit for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of entry or not more than 30 days before the entry; or
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering, and the date and time of entry.

Pursuant to paragraph 88(g) of the Act, regular documents, when required to be given from one party to another, may be given by affixing the document to a door or other conspicuous place. In accordance with paragraph 90(c) of the Act, a document delivered by posting to a door or other conspicuous place is deemed served on the third day after its posting.

In order for an entry notice served by posting to the tenant's door to be effective, it must be served no later than four full days in advance of the entry time. By the landlord's own evidence, the landlord did not provide sufficient time for service. The tenant is not required to provide her permission to enter pursuant to paragraph 29(1)(a) of the Act and explained that she did not provide permissions on the day she answered the door as she was ill. The landlord is permitted to enter only where notice to enter is delivered in accordance with paragraph 29(1)(b). As no proper notice was given, the landlord was not entitled to enter the unit on the times she attempted to do so.

I note that the tenant is not obliged to facilitate entry to the rental unit for notice given pursuant to paragraph 29(1)(b) of the Act, but she may not prevent or interfere with entry by the landlord or her agents if effective notice is provided.

As landlord was not entitled to enter the rental unit as her notice was not effective, the landlord has not provided a basis for ending the tenancy pursuant to section 56 of the Act and her application is dismissed.

As the landlord has been unsuccessful in this application, she is not entitled to recover her filing fee from the tenant.

Conclusion

The landlord's application is dismissed. The tenancy will continue uninterrupted until it is lawfully ended in accordance with the Act.

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

Dated: January 06, 2016

Residential Tenancy Branch

