



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend although the 3:00 pm teleconference hearing remained open until 3:23 pm. The landlord attended this hearing and was given an opportunity to present sworn evidence, refer to her materials submitted for this hearing and to make submissions on her application.

The landlord provided sworn undisputed testimony that she personally served all of the materials for this hearing including the landlord's Application for Dispute Resolution ("ADR"), Notice of Hearing as well as the evidentiary materials to the tenant at his rental unit. She provided a piece of paper signed by herself, the tenant and a witness indicating that the tenant had been served with these documents. Based on the landlord's testimony and documentary evidence, I find that the tenant was duly served with the landlord's ADR and was provided with notice of this hearing on September 22, 2017 in accordance with section 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?
Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on May 1, 2017 as a month to month tenancy with a rental amount of \$1200.00 payable on the 1st of each month. The landlord continues to hold a \$600.00 security deposit paid by the tenant at the outset of this tenancy (April 17, 2017). The landlord applied to end the tenancy early claiming that the tenant is disruptive to her and other tenants in the residential premises.

As evidence to support her application for an early end to tenancy, the landlord submitted: a copy of the Residential Tenancy Branch standard residential tenancy agreement signed by both the tenant and the landlord; a letter from the strata management company to the landlord indicating that a leak occurred from an overflow in the kitchen sink of the rental unit. The leak resulted in damage to two other rental units. When asked about the reason for the leak, the landlord was unable to confirm whether the damage was intentional, negligent or unintentional on the party of the tenant.

The landlord also submitted a copy of a police officer's card where handwritten information regarding the rental unit had been noted. The landlord did not submit a police report. The landlord submitted a security report from the security company responsible for the residential premises. I advised the landlord that the report were largely illegible and that she would be required to provide oral testimony regarding these incidents noted in the reports. The landlord testified that, on one occasion, the tenant knocked on several residents' doors and walked into one door. He was described as frail and possible unwell. It appears, from the materials and the comments of the landlord that the police were called on this occasion but the details or resolution of this matter were not made clear by the landlord at this hearing.

The landlord testified that, generally the tenant disturbs other occupants and that the interior of his rental unit is very dirty. The landlord described the unit as "unsafe". She submitted photographs of the interior of the rental unit. The photographs depicted one room that was piled with what appears to be garbage, clothes and other debris. The kitchen had dirty dishes and discarded food containers. The bathroom and the main living area also had a great deal of debris on the floor. There appeared to be some areas where a person could walk through the mess though there was a substantial amount of discarded items including a drawer. The landlord testified that she believed the state of the unit was a hazard and that the tenant was unstable. She testified that he was unwilling to discuss tenant/landlord matters with her.

The landlord testified that she is scared of the tenant and that other residents are also scared of him. She stated that, on more than one occasion, he has refused to let her into the rental unit when she has asked. She testified that, on these occasions, she has

not usually presented him with any prior notice to enter the rental unit. Furthermore, she testified that he misplaced his keys once and she had to attend to the residential premises.

Analysis

In order to end a tenancy early and issue an Order of Possession under section 56, I first need to be satisfied that 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 a lawful right or interests of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity *that affects the quiet enjoyment, security, safety, physical well-being of another occupant or is likely to jeopardize a lawful right or interest of another occupant or the landlord or caused extraordinary damage to the residential property, and*

it would be unreasonable, or unfair to the landlord, the tenant 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.

I find that the evidence and testimony provided on behalf of the landlord support the claim that the tenant has interfered with or disturbed another occupant of the residential property and/or the landlord. However, I am not satisfied, based on the evidence provided for this hearing and the testimony of the landlord that the tenant has **significantly** interfered with or **unreasonably** disturbed the landlord or others. I am also not satisfied that there is sufficient evidence to prove that the tenant has engaged in illegal activity. I find that the landlord's evidence and testimony support the claim that the tenant has put the landlord's property at significant risk.

Pursuant to section 56, I am able to make an order specifying an earlier date for the end of a tenancy than would be the case had the landlord relied on a one month notice to end a tenancy for cause, only if I am satisfied that 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. This type of relief is an exceptional measure taken only when a landlord can show that it would be there is a verifiable danger or risk in allowing the tenancy to continue until the appropriate steps are taken to issue notice to end tenancy for cause.

While I find that the tenant has put the landlord's property at a significant risk, I find that the landlord has failed to prove that it is unreasonable or unfair to the landlord or other tenants to serve the tenant with a One Month Notice to End Tenancy under section 47 of the *Act* and wait for that notice to take effect.

I recognize that the landlord is upset by her interaction with the tenant and wishes to alleviate the concerns expressed by the other tenants in this building and the strata management company. However, as an application for an early end to tenancy is a measure taken only when a landlord cannot reasonably undertake the usual steps required in seeking an end to a tenancy because of dire, urgent circumstances.

I note that the landlord was given a great deal of latitude and opportunity (23 minutes) to provide testimony to support her application for an early end to tenancy. The landlord was offered several opportunities to provide more explanation of the circumstances surrounding her application. As I am not satisfied that the landlord has demonstrated why it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlord's application for an early end to this tenancy. As the landlord was unsuccessful in her application, I find she is not entitled to recover her filing fee.

Conclusion

I dismiss the landlord's application for an early end to tenancy.

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: October 13, 2017

Residential Tenancy Branch