



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWOOD NORTH INVESTMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

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.

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 gave sworn testimony that he sent the tenant a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) by registered mail on September 11, 2017. Although the tenant denied having received the 1 Month Notice sent by registered mail, he testified that his roommate received the 1 Month Notice handed to her on or about September 29 or 30, 2017.

The landlord gave sworn testimony that he sent the tenant a copy of the dispute resolution hearing package by registered mail and placed another copy in the tenant's mailbox. Although he did not have the dates for these methods of serving the tenant with the dispute resolution hearing package, the tenant confirmed that he received this package about a week or so ago in his mailbox. I find that the tenant was duly served with the dispute resolution hearing package in accordance with section 89 of the *Act*.

The landlord's only written evidence was a document containing a police file number and a copy of the Residential Tenancy Agreement for this tenancy. The landlord maintained that the tenant had a copy of the Residential Tenancy Agreement, a

statement which the tenant denied. The tenant said that he has been trying to obtain a copy of the Residential Tenancy Agreement from the landlord for some time, to no avail. As both parties agreed to the essential basics of the contents of the Residential Tenancy Agreement, and the police file number is of no determining factor regarding this dispute, no determination regarding service of these documents is needed in considering the landlord's application.

At the commencement of the hearing, the tenant understood that the subject matter of this hearing was an application to dispute the 1 Month Notice., which his roommate had submitted to the Residential Tenancy Branch early in October 2017. After reviewing the Notice of Hearing that enabled him to access this teleconference, he realized that the sole matter in dispute at this hearing was the landlord's application for an early end to this tenancy and not his own application to cancel the 1 Month Notice. After checking the Residential Tenancy Branch's records, I advised the parties that I could locate no reference to any application to cancel the 1 Month Notice initiated by the tenant. I also mentioned that I could also not find any application from the landlord to obtain an Order of Possession on the basis of the landlord's 1 Month Notice. The tenant advised that he would check with his now former roommate who submitted the 1 Month Notice and with the Residential Tenancy Branch regarding his application for dispute resolution to cancel the 1 Month Notice.

Issues(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 from the tenant?

Background and Evidence

This tenancy in the landlord's six-plex rental building began as a one-year fixed term tenancy on January 8, 2016. When the fixed term ended on December 31, 2016, the tenancy continued as a month-to-month tenancy. Monthly rent is set at \$825.00, payable in advance on the first of each month. The landlord continues to hold a \$412.50 security deposit and a \$100.00 pet damage deposit, both paid on January 5, 2016.

The landlord's application for an early end to tenancy was primarily based upon the landlord's claim that there was illegal substance activity at the rental unit which led to a death in the rental unit. The landlord maintained that other tenants in this rental property were disturbed and uncomfortable about the circumstances that led to the

death in the rental unit. The landlord also asserted that the property value and reputation of the rental property had been tarnished as a result of this incident.

The landlord's application relied almost solely on his sworn testimony. Although he described conversations and interactions with a whole range of third parties, including tenants, former tenants, building managers, a local realtor, a member of the volunteer fire department, a police constable, a clerk with the local police detachment, and even a taxi driver, he produced nothing in writing from any of these individuals. He did not call any of these people as witnesses at this hearing. He said that there had been a series of problems with excessive partying at this rental unit which had become so disturbing that he had lost tenants and a resident building manager. He testified that there were a large number of "kids" attending the rental unit on an ongoing basis, that the rental unit had become a well known "hot spot" where emergency personnel would have to take extra precautions, and there had been many incidents of concern at the rental unit. He said that the "last straw" was when a young man died of some type of drug overdose at the rental unit. He said that one of the tenants, Andrew, was very concerned about what had been happening at the rental unit. The landlord also testified that the publicity associated with this death would reflect badly upon his rental property, which he had recently listed for sale.

The tenant confirmed that a friend of his did indeed pass away unexpectedly on September 3 or 4, 2017, after returning late one night after the tenant had gone to sleep. He awoke the next morning to find his friend had passed away overnight. He testified that he is often working out of town. He noted that he is 38 years of age and that the youngest of those who visit him is 25 years of age. He gave undisputed sworn testimony that only one person has vacated the rental unit since he moved into the rental property, and he considered that person a friend of his. He also testified that the tenant who the landlord maintained was so worried about his friend's death was actually very supportive and understanding on the morning of the incident.

The tenant's witness, JS, testified that she dropped off the person who passed away at the tenant's rental unit on September 4, 2017. She said that she left him in good spirits at 3:30 or 4:00 a.m. and gave no indication of being in distress at that time. She said that there was no evidence of any party happening at the rental unit when she dropped him off and that she did not know the deceased to be a frequent drug user.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an

Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I 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 has caused or is likely to cause damage to the landlord's property;*
- *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;*
- *engaged in illegal activity that 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, **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.

In this case, the landlord has issued a 1 Month Notice, but did not enter a copy of this Notice into written evidence.

The landlord has not provided any corroborating evidence of any type from anyone he referred to in his sworn testimony. While I can understand that some tenants might be reticent to provide sworn testimony or written statements, the totality of the landlord's evidence relies on his account of third party statements provided to him. Many of these people were not identified by name by the landlord. The tenant provided undisputed sworn testimony contesting the landlord's claim that tenants have moved out of the rental unit because of the tenant's behaviours and activities at the rental unit. The death of an individual at a rental unit, although troubling, does not mean that there would be reason for residents in the remainder of the rental building to be concerned about their health, safety or well-being. The landlord produced no direct evidence of any kind from any of the individuals he referred to at the hearing to support his statements and assertions at the hearing. Significantly more evidence would need to be produced by the landlord in order to obtain an early end to a tenancy for such reasons.

I find that the landlord has produced very little evidence to demonstrate that it would be unreasonable or unfair to the other occupants of the rental property or the landlord to wait until an application to obtain an Order of Possession based on the 1 Month Notice could take effect. For these reasons, I dismiss the landlord's application in its entirety.

As it does not appear that the Residential Tenancy Branch has any record of an application to cancel the 1 Month Notice from the tenant before it, my decision does not affect the landlord's ability to submit a separate application to obtain an Order of Possession based on the 1 Month Notice issued in September 2017.

Conclusion

I dismiss the landlord's application for an early end to tenancy and recovery of his application fee. This tenancy continues until ended in accordance with the *Act*.

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 14, 2017

Residential Tenancy Branch