



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, 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 the issuance of an Order of Possession pursuant to section 56; and
- authorization to recover his 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 testified that he had anticipated that his son who was familiar with the details of this matter and was more proficient in the English language to represent him at this hearing. As his son was unable to be present, the landlord proceeded, despite knowing few details as to how documents and photographs had been served to the tenant and after stating that his proficiency in the English language was limited. Although it would have been advisable to have someone present who could translate for the landlord, it was the landlord's responsibility to ensure that he could adequately speak to the application for an early end to tenancy that he was seeking.

The tenant confirmed that on September 10, 2017, she was handed the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), the only notice to end tenancy she has been issued by the landlord. Both parties confirmed that no 1 Month Notice to End Tenancy for Cause (a 1 Month Notice) has been issued to the tenant.

The parties confirmed that there is a dispute resolution hearing scheduled for November 16, 2017 at 11:00 a.m. to consider the tenant's application to cancel the landlord's 10 Day Notice and her application to obtain emergency repairs and repairs to the rental unit. I advised the parties that these matters were not before me; only the landlord's application as described above was properly before me.

As the tenant confirmed that the landlord's son handed her a copy of the landlord's dispute resolution hearing package for this application on October 10, 2017, I am satisfied that the landlord has served the tenant with this package on that date in accordance with section 89 of the Act.

Although the landlord believed that his son served the tenant with written, photographic and video evidence, the tenant testified that she was not served this evidence. I also note that the video evidence pertaining to a stolen vehicle that was allegedly stored on the rental property with the tenant's knowledge was only provided to the Residential Tenancy Branch five days prior to this hearing, well after the deadline for providing such evidence. As the landlord could not provide any details regarding service of any of his evidence and the tenant gave sworn testimony that she was not served with this evidence, I have not considered any of the landlord's written, photographic or video evidence.

I should also note that the tenant attempted to enter digital evidence on the Residential Tenancy Branch's Service Portal for this dispute. However, all of this evidence involved the tenant's application to be heard on November 16, 2017. As these matters were not properly before me, I have not considered the tenant's digital evidence.

Issues(s) to be Decided

Is the landlord entitled to an early end of 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 began on May 6, 2016, as a periodic tenancy. According to the terms of the written tenancy agreement between the parties, the tenant agreed that she is responsible for paying monthly rent of \$675.00 in advance on the second of each month.

During the hearing, the landlord gave repeated sworn testimony that he was seeking an early end to this tenancy because the tenant had failed to pay her September 2017 rent when it was due. He also maintained in his application that the tenant had caused damage to the rental unit, which will require extensive repairs. The landlord's application included the following description of the reasons for ending this tenancy early.

Tenant is posing an immediate and severe risk.

Damage to property. Broken windows and doors. Interior of the rental suite has been damaged including the walls (kitchen and washroom walls). They have been using hazardous wiring by changing the wires for the stove and fridge. An there is another occupant living in the suite that is not authorized.

I can consider the above description because the landlord (or his son) included this in the application for dispute resolution, which the tenant confirmed she received.

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 only issued a 10 Day Notice for unpaid rent; he has not issued any 1 Month Notice for Cause pursuant to section 47 of the *Act*. As outlined above, the landlord was not expecting to be the person presenting his position with

respect to his application for an early end to tenancy and had difficulty expressing his reasons in the English language for seeking an early end to this tenancy. His primary reason for believing that he was entitled to an early end to this tenancy was because the tenant had failed to pay her rent on time when it was due. This is not a valid reason for obtaining an early end to a tenancy.

As outlined above, the landlord's application for dispute resolution did mention additional reasons for obtaining an early end to this tenancy in the application for dispute resolution. The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. However, I cannot consider the written, photographic and video evidence because the landlord produced no evidence as to how it was served to the tenant, who denied receiving it. The landlord's sworn testimony centered on the non-payment of rent, adding that the tenant had damaged the rental unit. For her part, the tenant maintained that the landlord has not properly maintained the rental unit and has requested the issuance of an order for repairs and emergency repairs.

As noted above, the landlord has not issued any notice to end tenancy for cause pursuant to section 47 of the *Act*. This would be the usual first step for a landlord seeking an early end to tenancy. Rather than issuing any 1 Month Notice for Cause, the landlord in this case said that he was attempting to obtain an early end to tenancy because the tenant has not paid her rent on time.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair. Here, there are disputes as to who is responsible for the poor condition of the rental unit. I emphasize that failure to pay rent on time does not qualify for the issuance of an early end to tenancy. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

My decision to dismiss the landlord's application for an early end to this tenancy does not affect the upcoming hearing of the tenant's application to cancel the 10 Day Notice. Whether or not the tenant paid rent that was due and whether this tenancy should be ended for the reasons cited in the 10 Day Notice are matters that were not before me. I would encourage the landlord to ensure that he has someone present at the November 16 hearing to represent him who is familiar with the details of the service of documents and who can adequately communicate in the English language.

As the landlord has been unsuccessful in this application, I dismiss the landlord's application to obtain the recovery of his filing fee from the tenant.

Conclusion

I dismiss the landlord's application in its entirety. 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 09, 2017

Residential Tenancy Branch