



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I kept the teleconference hearing open until 9:30 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord and her translator/advocate attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony and written evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenants' door on September 13, 2017. She confirmed information provided in her written evidence that a dispute resolution hearing is scheduled on December 6, 2017, to consider the tenants' application to cancel the 10 Day Notice, as well as other aspects of the tenants' application.

The landlord entered undisputed written evidence supported by sworn testimony that she sent both tenants a dispute resolution hearing package and her written and photographic evidence by registered mail on October 25, 2017. She also provided written evidence in the form of Canada Post's Online Tracking system to demonstrate that both packages were successfully delivered to the tenants on October 27, 2017. Signatures from both tenants indicating that they received these documents were also provided by the landlord. I find that both tenants were deemed served with these documents in accordance with sections 88, 89 and 90 of the *Act* on October 30, 2017, five days after their registered mailing.

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 one-year fixed term tenancy for a rental unit in a four-plex rental building commenced on April 15, 2017. The landlord lives next door. According to the terms of the signed Residential Tenancy Agreement entered into written evidence by the landlord, monthly rent is set at \$1,000.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$500.00 security deposit, paid on April 13, 2017. The tenants are also responsible for ¼ of the utilities for this rental building.

The landlord's 10 Day Notice identified \$1,750.00, as owing for this tenancy as of September 13, 2017, the date of that Notice. Since then, the landlord testified that the tenants have failed to pay their October and November rent, raising the amount of outstanding rent to \$3,750.00, as of the date of this hearing.

The landlord confirmed that she has not issued any 1 Month Notice to End Tenancy for Cause (a 1 Month Notice) pursuant to section 47 of the *Act*. The landlord has not applied for an Order of Possession relating to the 10 Day Notice, nor has she applied for a monetary award for unpaid rent.

In her application for dispute resolution and her written evidence, the landlord maintained that the tenants were responsible for hypodermic needles and other drug paraphernalia around the rental property. She also provided written evidence and sworn testimony that a neighbour told her that someone on the rental unit was carrying a gun, which was subsequently reported to the police. Although the landlord maintained that a police file was created for this incident, she was unable to provide the contents of any police report or any document or sworn testimony from the neighbour who witnessed this occurrence.

The landlord also provided written and photographic evidence that the tenants have changed the locks in their rental unit without obtaining authorization from the landlord to take this action.

The landlord said that she has received complaints from other tenants in the building. She said that the other tenants in her building are scared of the tenants and feel unsafe as a result of the activities occurring at the tenants' rental unit. She said that they were frightened to provide anything in writing regarding the tenants' behaviours and were

unwilling to participate in this teleconference hearing for the same reason. The landlord also confirmed that she felt unsafe with the tenants remaining in the rental unit.

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 10 Day Notice, which prompted the tenants to apply to cancel that Notice. The 10 Day Notice will be considered at the December 6, 2017 hearing. The landlord has not issued any 1 Month Notice, the usual manner whereby a landlord would end a tenancy for cause under section 47 of the *Act*.

The landlord has not provided any witnesses or witness statements to support her claim that this tenancy needs to be ended in accordance with section 56 of the *Act*. The few photos that she provided confirm that new locks do appear to have been placed on the tenants' door. There are also texts and other documents in the landlord's evidence, most of which involve the circumstances surrounding the landlord's thus far

unsuccessful attempts to obtain the outstanding rent. While I can understand that some tenants might be hesitant to provide sworn testimony or written statements, most of the landlord's evidence relies on third party statements provided to her. Significantly more evidence would need to be produced by the landlord in order to obtain an early end to a tenancy for such reasons.

Turning to the second portion of the test outlined in section 56 of the *Act*, the landlord said that she is unaware of any threats uttered against her or other tenants in the building by the tenants. She said that she no longer speaks with the tenants. Under these circumstances and as this situation has been ongoing since mid-September without proof of any clearly evident escalation of interaction with the tenants, it is difficult for me to conclude that it would be unreasonable or unfair to the landlord or the other tenants in the building to wait a further three weeks until the December 6, 2017 hearing to determine whether this tenancy will continue. 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 Order of Possession could take effect. For these reasons, I dismiss the landlord's application in its entirety.

Conclusion

I dismiss the landlord's application for an early end to tenancy and recovery of her 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 16, 2017

Residential Tenancy Branch