Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Introduction

I am issuing this Interim Decision with respect to the hearing of 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 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. In order to make a determination as to jurisdiction and the proposal to have the application before me joined and adjourned to the hearing of the tenant's application scheduled for December 12, 2017, I heard almost 120 minutes of sworn testimony from the landlord, his witnesses, and the tenant.

At the commencement of this hearing, the tenant identified himself by his full name as appears above, as opposed to the abbreviated name identified in the landlord's original application. With the permission of the parties and in accordance with powers delegated to me under the *Act*, I have modified the name of the Respondent in the landlord's application to reflect the full spelling of the tenant's name as he declared at the hearing and as correctly appears above.

Preliminary Issue – Jurisdiction

Despite the landlord having issued notices to end tenancy for unpaid rent and for cause under the *Act*, and having applied for dispute resolution for an early end to this tenancy under the *Act*, the landlord offered sworn testimony and written evidence that this was not in actuality a residential tenancy covered under the *Act*, but a commercial tenancy. The landlord sought a determination as to whether this tenancy fell within the *Act*.

The landlord explained that this tenancy began approximately four years ago, after the tenant responded to his listing on a popular rental website of the availability of one of his single garages at the rear of the landlord's four plex rental property. He entered into

written evidence an undated copy of that advertisement, which was intended as heated storage with electricity or perhaps as a heated workshop. The landlord said that he had no idea until six or seven months after the tenancy began that the tenant, who was by then doing handyman chores for the landlord, was also living in this middle garage of a three-bay garage at the back of the landlord's four plex rental building. He maintained that his tenants advised him that the tenant was actually using this garage as his accommodations. The garage had no kitchen or plumbing when it was rented to the tenant, although the tenant appears to have added a sink, which outlets to the driveway, at some point in his tenancy. The landlord and his wife testified that they allowed the tenant to live there, as they realized he had nowhere else to go. However, they maintained that this originated as a commercial tenancy and not a residential one and that the *Act* should not apply to a garage storage/workshop unit which does not comply with any municipal requirements for residential use.

The tenant gave sworn testimony that the landlord knew shortly after he moved into the workshop space that the tenant had rented that the tenant was also living there. He said that he showed the landlord his bed a few days after taking occupancy of the garage space he had rented. The tenant also entered into written evidence a copy of a standard Residential Tenancy Agreement (the Agreement) that stated that this tenancy began on September 1, 2013, for a monthly rent of $450.00, with a $225.00 security deposit paid on September 1, 2013.

The landlord gave sworn testimony, supported by a written statement, that he only signed this Residential Tenancy Agreement at the request of the tenant because the tenant needed some form of proof that he had a residence in order to facilitate a visit with one of the tenant's family members. The landlord testified that both parties backdated this Agreement and included terms in the standard Agreement that were clearly at odds with his rental of a garage without plumbing or cooking facilities.

Analysis – Jurisdiction

Although I have given the landlord's testimony and evidence careful consideration, I find that at some point this tenancy converted from the originally intended rental of a garage workshop to an actual residential tenancy that falls within the jurisdiction of the *Act*. The absence of the usual services and facilities for residential accommodation in this garage does not negate the reality that the landlord has received rent from the tenant for what has been used by the tenant as living space for over four years. By the landlord's own admission, he has known for much of this time that the tenant was residing in the garage which the landlord had originally rented to him as workspace.

The existence of the Agreement signed by both parties and, according to the landlord, backdated to the beginning of this tenancy, also lends credence to this tenancy qualifying as a residential tenancy under the *Act*. While the landlord's motivations for signing this Agreement may have been well-intentioned, this signed Agreement supports the tenant's claim that there is written evidence to support his assertion that this tenancy falls within the jurisdiction of the *Act*.

I find that I have jurisdiction to consider the landlord's application under the *Act*. Despite the deficiencies of this space, this is a residential tenancy for the purposes of the *Act*. Both parties have the rights and responsibilities established under the *Act* for their landlord-tenant relationship.

Preliminary Issue –Proposed Adjournment of Hearing to December 12, 2017 and Proposed Joining of this Application to one submitted by the Tenant

Near the beginning of this hearing, the tenant advised that a hearing had been scheduled to consider his own application for dispute resolution for this same tenancy for the afternoon of December 12. He asked that the landlord's current application for an early end to this tenancy and recovery of the landlord's filing fee be adjourned for consideration at the December 12 hearing along with his own application. One of the primary issues to be considered at the December 12 hearing, identified by the file number in the first page of this decision, is the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) issued by the landlord on September 28, 2017.

Although the landlord agreed to the proposal that the two applications be joined into a single hearing, the landlord preferred that the issues identified in the tenant's application be moved forward for consideration at the December 7, 2017 hearing. He said that he had arranged for a number of witnesses to call into the December 7 hearing, and was prepared to respond to the tenant's application at the December 7 hearing. The landlord also maintained that the proposed five-day delay was unreasonable and unfair to the landlord and his other tenants as there were genuine safety concerns presented by allowing this tenancy to continue.

The tenant did not wish to have his own application heard on December 7, but was fully in favour of hearing the two applications together on December 12.

Neither the landlord nor the tenant had submitted any evidence referencing the December 12 hearing scheduled to consider the tenant's application to cancel the landlord's 1 Month Notice. As such, I advised the parties that I was unaware of

evidence the tenant wished to refer to with respect to his application to cancel the 1 Month Notice and ill-prepared to consider his application at the December 7 hearing.

Analysis – Proposed Joining of Applications and Proposed Adjournment of Hearing to December 12, 2017

The Residential Tenancy Branch (the Branch) has established Rules of Procedure, which include how requests for adjournments of hearings are to be considered. Rule 7.8 allows me to consider requests for adjournments presented at the hearing. In considering such a request, I am to take into account the following factors, outlined in Rule 7.8 of the Branch's Rules of Procedure:

> *Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> *• the oral or written submissions of the parties;*
> *• the likelihood of the adjournment resulting in a resolution;*
> *• the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
> *• whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> *• the possible prejudice to each party.*

As outlined below, the Branch's Rule of Procedure 2.10 identifies the process whereby I can consider the parties' proposal to join the landlord's application and the tenant's application.

> ***2.10 Joining applications***
> *Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:*
> *a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;*
> *b) whether all applications name the same landlord;*
> *c) whether the remedies sought in each application are similar; or*
> *d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.*

In this case, consideration of the landlord's 1 Month Notice is relevant to this application because section 56 of the *Act* establishes the grounds whereby a landlord may make an

application for dispute resolution to request an early 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 advised the parties that 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 both a 10 Day Notice for unpaid rent and a 1 Month Notice for Cause pursuant to section 47 of the *Act*. A hearing of the tenant's application to cancel the 1 Month Notice pursuant to section 47 of the *Act* is scheduled to be heard on December 12, 2017, five days after the hearing of the landlord's application for an early end to this tenancy.

At the December 7 hearing of this matter, I heard evidence from the parties as well as the landlord's witnesses with a view to considering whether it would be unreasonable or unfair to the landlord or other occupants of the residential property to have to wait the additional five days to have the landlord's notice to end tenancy for cause under section 47 of the *Act* considered.

The landlord presented sworn testimony, written statements and witnesses to address the first portion of the test outlined above in section 56 of the *Act* regarding features of this tenancy. After considering the evidence before me, I do not find that either the

landlord or his witnesses presented sufficient evidence that the concerns raised were so immediate and pressing that they could not wait until the December 12 hearing of the tenant's application to cancel the 1 Month Notice. In this regard, the tenant advised that he has not been living in this rental unit for almost a month. He also gave sworn testimony that he would not even visit the rental space, which he also uses for storing his tools, until the December 12 hearing of this matter. On this basis, and after considering the factors outlined in Rule 7.9 of the Branch's Rules of Procedure, I find that the proposed five day adjournment of the landlord's application to be heard along with the tenant's application on December 12 would not be unreasonable or unfair to the landlord or other tenants in this rental property. This would also enable the consideration of the sufficiency of the grounds for the 1 Month Notice, unencumbered by the provision in the second portion of section 56 of the *Act* that the landlord could not wait until consideration of the 1 Month Notice by an arbitrator appointed under the *Act*. For these reasons, I allow the tenant's requested adjournment of the landlord's application to be heard in conjunction with the tenant's application at 1:30 p.m. on December 12, 2017.

In considering the request for adjournment, I also heard much of the testimony that would also form the substance of any consideration of the grounds for the 1 Month Notice, which encompass the first portion of section 56 of the *Act*. As such, I consider myself seized of both the landlord's application and the tenant's application, and will take into consideration evidence already presented by both parties and their witnesses in reaching a final decision on the two applications after hearing additional testimony and evidence at the adjourned hearing of December 12. Unless there is a need for the landlord's witnesses to provide additional testimony regarding portions of the tenant's application that were not included in their testimony at the December 7 hearing, there is no need for the witnesses who have already submitted sworn testimony at the December 7 hearing to attend the December 12 hearing.

Conclusion and Directions Regarding December 12, 2017 Hearing

I find that this tenancy falls under the jurisdiction of the *Act*.

I join this application with the tenant's application under the file number identified in the first page of this decision. I adjourn the landlord's application to be heard on December 12, 2017 at 1:30 p.m. with the tenant's application.

In the event that the parties have not already entered into written evidence a copy of the landlord's 1 Month Notice, **I order them to ensure that a copy of this 1 Month Notice**

is submitted for my consideration through the Branch's online evidence submission process. As both parties have entered evidence using this system, there is no need to describe how they can access this system.

This interim 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: December 11, 2017

Residential Tenancy Branch