



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act. The landlord was represented by an agent. The tenant appeared on her own behalf. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explained the purpose of the hearing to the parties, which is to determine whether the circumstances warrant an urgent end to the tenancy due to immediate and severe risk to the property or other occupants or the landlord. I proceeded to explain the hearing process to the parties and permitted the parties to ask questions about the process. The parties indicated they understood the purpose of the proceeding and did not have any questions.

Preliminary and Procedural Matters

The landlord's agent made this application on October 9, 2017 and served the hearing package upon the tenant by putting it in the doorjamb of the rental unit on October 17, 2017. The tenant acknowledged receiving these documents. Although the landlord did not properly serve the package in a manner required under section 89 of the Act (leaving documents wedged in a door jamb is not the same as **attaching** documents to a door or other conspicuous place) I deemed the tenant sufficiently served pursuant to the authority afforded me under section 71 of the Act considering the tenant received the documents and appeared at the hearing prepared to respond to the allegations.

The landlord's agent testified that he left evidence concerning an allegation the tenant has not been separating the recycling from the garbage under the door mat in front of

the rental unit on November 19, 2017. The tenant stated she did not receive this evidence. Evidence for a dispute resolution proceeding must be served in a manner that complies with section 88 of the Act and in accordance the Rules of Procedure. Rule 2.5 of the Rules of Procedure provide that evidence for an urgent application, such as this one, requires that the evidence be served with the hearing package and that the Arbitrator will consider whether to accept evidence served afterward. I informed the landlord's agent that I would not consider this evidence further since the tenant did not receive it and separating recyclable from garbage is not a basis to end the tenancy on an urgent basis.

During the hearing, the landlord's agent attempted to introduce evidence concerning unpaid rent. The landlord's agent stated a 10 Day Notice to End Tenancy for Unpaid Rent has been filled out but acknowledged that it has not yet been served upon the tenant. Unpaid rent is not a basis for ending a tenancy by way of this application. Further, to introduce issues not identified or related to the matters on the Application for Dispute Resolution would be a violation of the principles of natural justice. Finally, I informed the landlord's agent that in order to end the tenancy for unpaid rent the landlord must first serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. Accordingly, I did not consider the matter of unpaid rent further. I informed the landlord's agent that the landlord remains at liberty to serve the tenant with a 10 Day Notice and enforce the 10 Day Notice by way of another Application for Dispute Resolution, as appropriate.

After both parties had an opportunity to be heard, I orally provided the parties with my decision that I was dismissing the landlord's application as I was not satisfied by the evidence before me that the circumstances were sufficiently urgent and serious to end the tenancy under section 56 of the Act. I informed the landlord's agent that the landlord remains at liberty to serve the tenant with a Notice to End Tenancy as appropriate in the circumstances, including a 1 Month Notice to End Tenancy for Cause. Only at that point in time did the landlord's agent state that a 1 Month Notice had already been served. I asked the landlord to describe the 1 Month Notice allegedly served. The landlord appeared to be reading from a 1 Month Notice and stated that it was dated and served on September 30, 2017. The tenant stated she did not receive a 1 Month Notice. I noted that in filing this application the landlord had not indicated a 1 Month Notice had been served. Nor, had the landlord submitted a copy of a 1 Month Notice or Proof of Service of the 1 Month Notice as evidence. When I asked the landlord how he served the 1 Month Notice he said it was put in the door jamb of the door. I informed the landlord that leaving a document in a door jamb does not meet the service provisions of section 88 of the Act and that if he is going to post a document it

must be attached to the door with as with tape or a nail or something that would attach the document to the door. At that point the landlord's agent stated that there was tape on the 1 Month Notice. Not only did I find the landlord's agent's testimony to continue to change depending on the information I provided him, leaving me the impression he was less than credible, but I must resolve the Application that are before me and the landlord had not sought an Order of Possession based upon a 1 Month Notice. I am bound to conduct a fair hearing, including hearings that are consistent with the principles of natural justice. To consider a matter that the tenant has not been put on notice with be the subject of this dispute would violate the principles of natural justice. Therefore, I informed the landlord's agent that the landlord remains at liberty to either file another Application for Dispute Resolution to seek an Order of Possession based on the 1 Month Notice allegedly already served; or, to properly serve the tenant with a 1 Month Notice.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and obtain an Order of Possession as provided under section 56 of the Act?

Background and Evidence

The tenancy started on May 1, 2017 and the tenant paid a security deposit of \$650.00. The tenant is required to pay rent of \$1,300.00 on the first day of every month.

The tenancy was for a fixed term of six months and there was no requirement that the tenant vacate the rental unit at the end of the fixed term. According, the tenancy continued on a month to month basis thereafter pursuant to section 44(3) of the Act.

The rental unit is a lower unit in a house. From May 2017 through August 2017 the upper unit was occupied by the landlord's agent. Starting September 1, 2017 the upper unit was rented to new tenants (herein referred to as "the upper tenants"). The upper tenants have two children, a three year old and a six year old. The tenant resides in the rental unit with her husband and six year old daughter.

The landlord acknowledged that while he resided at the property there were no significant issues with the tenant or her family members. I heard consistent testimony from the parties that there has been conflict between the upper tenants, the tenant and their respective children.

As for seeking to end this tenancy on an urgent basis, the landlord submitted that on September 24, 2017 the tenant's daughter chased the upper tenant's children and another child (six years old) with a knife and that the tenant's husband was present and did nothing about it. The tenant stated that she highly doubted the events transpired as described but acknowledged that she was in the bathroom at the relevant time; however, she claims her husband did not tell her about a situation with a knife.

Two days later there was a fight between the upper tenant's child and the tenant's child while at school. The upper tenants allege the tenant's child assaulted their child in a letter they wrote to the landlord. The tenant asserted the opposite and claims that she called the police about the schoolyard fight.

The landlord also submitted that on September 28, 2017 he called a meeting between the tenants in an effort to resolve their conflict. According to the landlord the tenant stormed off from the meeting and a few hours later the upper tenant's found their vehicle had been scratched and scribbled on. The upper tenants called the police in response to this vandalism and made an insurance claim. The tenant denied having anything to do with vandalism to the upper tenant's vehicle.

In support of the landlord's position the landlord had provided an undated letter purportedly written by the upper tenants. With respect to the events of September 24, 2017 the upper tenants appear to acknowledge they were not present when the alleged incident with the knife took place and appear to rely upon what they were told by their children and children's friend.

Analysis

Section 56(2) of the Act permits the Director, as delegated to an Arbitrator, to make an order to end the tenancy early, on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early under this provision I must be satisfied that:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) 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, or
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and
(b) 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.

[Reproduced as written with my emphasis added]

The landlord bears the burden to prove the tenant, or persons permitted on the property by the tenant, has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. The burden is high as this provision is intended to apply in the most urgent and severe circumstances.

With respect to the alleged incident with the knife, the landlord relies upon a letter purported written by upper tenants who appear to make their allegations based on the description of events by young children. The landlord did not call the upper tenants or their children to testify as to the events that took place and I am left with what amounts to double hearsay evidence. I find the double hearsay evidence is not overly persuasive as to the events that transpired on September 24, 2017. Further, I note that the upper tenants did not indicate they called the police in response to this incident; yet, they did to report vehicle damage to the police. I am of the view that if the events were so serious and significant on September 24, 2017 the police would have been called by the upper tenants.

As or the schoolyard fight, I heard opposing version of events and in the absence of other evidence I am not persuaded by the disputed version of events. Further, I am of

the view that there are other remedies to deal with a school yard fight between two six year olds that do not involve the tenant losing her home under section 56 of the Act.

As for the tenant “storming off” from a meeting with the landlord and the upper tenants I find this is not a basis for ending a tenancy. As for the disputed allegation that the upper tenants’ vehicle was vandalized after the meeting, I find insufficient evidence of damage or proof it was done by the tenant or a person the tenant permitted on the property. I was not provided photographs of the damage or reports made to the insurance company or the police to consider.

In light of all of the above, I find the landlord had failed to meet his burden to prove that this tenancy should end on an urgent basis as provided under section 56 of the Act and I dismiss this application without leave to reapply.

Conclusion

The landlord’s application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act is dismissed without leave.

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: December 08, 2017

Residential Tenancy Branch