



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with the landlords' 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, 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.

As the tenant confirmed receipt of the landlords' dispute resolution hearing package for this application and evidence, I am satisfied that the landlords have served the tenant with this package and evidence in accordance with sections 88 and 89 of the Act. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the landlords entitled to an early end of tenancy and an Order of Possession?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on September 6, 2017 when the tenant took over this tenancy from his two friends. This tenancy began with the two other tenants pursuant to a written tenancy agreement that began in June of 2017. The landlords submitted a copy of that tenancy agreement in their evidence. Monthly rent was set at \$875.00 as part of that rental agreement, and remained the same for this tenancy. The previous tenants paid the security deposit in the amount of \$437.50, which the landlords still hold.

The tenant testified in this hearing that although he was not named in any written tenancy agreements, he took over this tenancy by verbal consent of the landlords, when the other two tenants moved out. He testified that this verbal agreement was made on September 4, 2017, and he took possession of the keys from the two previous tenants. Rent was set at the same monthly amount, which he paid by e-transfer for the months of September and October 2017. The landlords confirmed receipt of these two payments. The tenant testified that the remaining

payments for November 2017 through to February 2018 were paid in cash to the landlords, and he was given receipts for these payments.

The landlords confirmed receipt of rent payments up to November 2017, and half of the December 2017 rent. The landlords dispute having issued any receipts to the tenant, stating that they had allowed the tenant only a 1 month fixed-term tenancy for September 2017, and the tenant was to move out on September 30, 2017. The landlords confirmed that they did accept rent past September 2017, but that they had verbally notified the tenant that he was to move out, but the tenant refused. The landlords dispute having received payments for January and February 2018.

The landlords testified that they had issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on December 6, 2017, with an effective move-out date of January 7, 2018. They testified that the 1 Month Notice was personally served to the tenant's girlfriend, as the landlords have received complaints from neighbours that the tenant has participated in illegal activity that jeopardized the safety and well-being of the landlords and other parties. The landlords did not provide a copy of the 1 Month Notice in their evidence. The tenant disputes having ever received any 1 Month Notices or any notices to end tenancy from the landlords. The landlords attempted to call a witness to testify in this hearing, but were unsuccessful despite being given the opportunity to do so. The landlords were given until 11:25 a.m. to call their witness, before the hearing was concluded.

During the hearing, the landlords gave repeated sworn testimony that they were seeking an early end to this tenancy because the tenant was a danger to those living there, and around him. They also maintained in his application that they did not give permission for the tenant to stay past September 2017. The landlords' application included the following description of the reason for ending this tenancy early.

Tenant is posing an immediate and severe risk.

Analysis

The landlords, in their application, requested an Order of Possession on several grounds. The landlords submitted that no tenancy agreement exists between both parties, that this occupancy was temporary and was to end on September 30, 2017, and that the tenant posed a danger to the landlord and other occupants. The landlords also testified that they had issued the tenant a 1 Month Notice, which the tenant disputes.

The definitions of a "tenancy" and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

“tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement;

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

The landlords submitted that the tenant should not be considered a tenant as there was no tenancy agreement. The landlords testified that they did give consent for the tenant to occupy the unit until September 30, 2017, but the tenant was supposed to vacate on or before that date. The tenant provided undisputed testimony in this hearing that although a written tenancy agreement was never signed, that he had paid rent in exchange for permission to occupy the rental unit. Both parties also discussed, and agreed to, monthly rent at \$875.00 per month.

Although the landlords dispute that this tenancy was ever agreed upon, and whether rent was paid past mid December 2017, a consideration of value has been provided and accepted for this occupancy. An oral agreement was made regarding the terms of this tenancy for the tenant to occupy the rent unit for a period of time, and the landlords had accepted rent payments past September 30, 2017. Based on the evidence, I find that the relationship between both parties is a tenancy, and that although no written tenancy agreement exists, by accepting monthly payment in exchange for occupancy, a tenancy agreement was implied.

It was disputed as to whether the landlords have issued a 1 Month Notice for Cause pursuant to section 47 of the *Act*. I find that despite the landlords’ sworn testimony that the tenant was served with a 1 Month Notice to End Tenancy, the landlords did not provide a copy of this 1 Month Notice, or sufficient evidence to support the service of this 1 Month Notice on the tenant. Furthermore, in order to uphold a 1 Month Notice, I must be able to verify that the 1 Month Notice complies with section 52 of the *Act*. Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlords or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant’s notice*], state the grounds for ending the tenancy, and (e) when given by a landlords, be in the approved form.

As the landlords did not provide a copy of the 1 Month Notice for this hearing, I was unable to verify that the Notice complies with the requirements of section 52 of the *Act*. Under these circumstances, I am dismissing the landlords’ request for an Order of Possession for cause, pursuant to the 1 Month Notice.

Residential Tenancy Policy Guideline #30 addresses fixed term tenancies. Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term only in specific circumstances.

Subsection G of Residential Tenancy Policy Guideline #30 addresses the circumstances when a landlord may apply for an Order of Possession as summarized below:

G. ORDERS OF POSSESSION AND FIXED TERM TENANCIES

In addition to the procedures under the Legislation for terminating a tenancy for cause or for non-payment of rent, a landlord may apply for an Order of Possession in respect of a fixed term tenancy when any of the following occur:

- a) the tenant has given proper notice to the landlord as a result of a material breach by the landlord;
- b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy for one of the following reasons:
 - i) the tenancy agreement is a sublease agreement; or
 - ii) the tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation;
- c) the landlord and tenant have entered into a written agreement specifying that the tenancy agreement shall end on a specified date.

As noted in the Policy Guideline *“Transitional provisions in the Legislation apply this change retrospectively. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances.”*. As such, this policy guideline retroactively applies to the current tenancy agreement between both parties.

As noted above the landlords failed to provide sufficient proof that the tenant was served with any notices to end tenancy, nor does the tenancy agreement meet any of the provisions prescribed in section 13.1 of the Residential Tenancy Regulation. There is no written, mutual agreement to end this tenancy. As the landlords' application for an Order of Possession does not meet any of the requirements as outlined in subsection G above, I dismiss the landlords' application for an Order of Possession with respect to a fixed term tenancy.

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.

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*. The landlords submitted, in evidence photos of the property, as well as text messages in support of the fact that the tenant posed an immediate risk or danger to the landlord or other occupants. The landlords testified that they had received reports from neighbours of the tenant's behaviour as the landlords resided in another city.

As noted above, the landlords failed to provide sufficient proof that they had issued any notices 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. The landlords, in their application, are attempting to obtain an early end to tenancy as they believe the tenant should have vacated the property in September 2017, and that he posed a risk or danger to those around him and the landlord's property.

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.

Although I find that the landlords testified that they did issue a 1 Month Notice, they did not make an application for an Order of Possession pursuant to that Notice. The landlords attempted to demonstrate that a 1 Month Notice was issued in this hearing, but failed to provide a copy of that 1 Month Notice, or proof of service that the 1 Month Notice was served to the tenant. I find that the landlords' failure to pursue an Order of Possession pursuant to a 1 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. Although the

landlords expressed concern over complaints about the tenant's behaviour, I find that the landlords failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. For these reasons, I dismiss the landlords' application for an early end to this tenancy.

As the landlords have been unsuccessful in this application, I dismiss the landlords' 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: February 7, 2018

Residential Tenancy Branch