



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 landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to this tenancy and an Order of Possession, pursuant to section 56;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 70 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's wife was listening in to the conference but she did not affirm the oath or testify; she asked questions about the hearing process at the end of the conference.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on January 5, 2018, by way of registered mail and by posting to the rental unit door. The landlord provided a copy of the Canada Post tracking number verbally and with his application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on January 10, 2018, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause, dated January 8, 2018 ("1 Month Notice") on the same date by way of posting to the rental unit door and by registered mail. The effective move-out date on the notice is February 28, 2018. The landlord provided a copy of the Canada Post tracking number verbally and with his application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on January 13, 2018, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on July 1, 2017 for a fixed term of one year after which it becomes a month-to-month tenancy. Monthly rent in the amount of \$2,400.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord stated that a security deposit of \$2,400.00 and a pet damage deposit of \$2,900.00 were paid by the tenant and the landlord continues to retain both deposits. During the hearing, I notified the landlord that collecting more than half a month's rent for each of the security and pet damage deposits was contrary to section 19 of the *Act*.

The landlord indicated the following reasons on the 1 Month Notice that was issued to the tenant:

- *Tenant or a person permitted on the property by the tenant has:*
 - *put the landlord's property at significant risk;*
- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;*
- *Tenant has not done required repairs of damage to the unit/site;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord stated that the rental unit is in "deplorable" condition. He said that the tenant has caused significant damage to the unit by allowing her two dogs to urinate and defecate both inside and outside the unit, treating it like a kennel.

The landlord testified that the tenant stores piles of garbage in the garage as well as inside the house in the kitchen and bedroom. He said that there is damage to the tiles, blinds, walls, flooring and carpet of the unit. He claimed that the tenant lives like a hoarder. He stated that the tenant does not answer her phone or the door and she does not respond to his mail.

The landlord testified that when he went to the rental unit on December 24, 2017, to deliver a Christmas gift to the tenant, he could see significant damage to the unit through the window and the front door. He said that he saw urine and feces from the tenant's dogs all over the hardwood flooring and carpet. He claimed that he spoke with the tenant's neighbours who told him that the dog feces had been present outside the rental unit for approximately two months.

He explained that he became aware of letters from strata, which had been sent to the tenant not the landlord, regarding the tenant's failure to clean up dog waste outside the rental unit. The landlord pointed me to two letters from July 18, 2017 and November 25, 2017, regarding the dog feces.

The landlord stated that he posted an inspection notice on the tenant's door and waited four days to inspect the rental unit on January 1, 2018. He said that he inspected the unit with his wife on January 1, 2018 and he provided a written statement to this effect. He maintained that the tenant was present during the inspection. He testified that the carpet had been shredded by the tenant's two dogs, the windows were scratched, and the walls, hardwood flooring and carpet had feces and urine all over them. He said that there were numerous garbage bags piled up in the garage, bedroom closets and in the kitchen cupboards, there were pizza boxes in the oven which created a fire hazard, and there was an unflushed toilet with dog feces. He claimed that there was such a bad smell that all the windows were left open because the tenant probably could not handle the smell.

The landlord said that during the January 1, 2018 visit, the tenant "got lost" in the bathroom and was in distress so he called the police. He stated that the police arrested her under the *Mental Health Act* and took her into custody. He testified that she was released after three hours on the same day and texted the landlord when she returned home. He said that he left a letter on the kitchen table, posted it to the door and sent a copy by registered mail on January 1, 2018, indicating breaches for the tenant to correct for his follow-up inspection on January 8, 2018.

The landlord stated that he returned on January 8, 2018, to find that the tenant had not corrected the breaches identified in his letter from January 1, 2018, so he issued the 1 Month Notice to her at that time. He said that a worker from the SPCA came to inspect the rental unit on January 13, 2018 and noticed two dogs. He said this was in breach of her tenancy agreement allowing her only one dog. He explained that the SPCA worker would not produce a report to him but could produce it to the RTB if someone called him.

Analysis

Overall, I found that the landlord was generally unprepared for the hearing. When I asked him to direct me to the evidence which he wanted me to consider, he spent a significant amount of time looking through his documents, locating the correct documents, finding the names of the documents and then finding the relevant provisions within the documents. The landlord seemed unsure on how to present his case, asking me what I wanted to know and what he should present. He complained that this process was frustrating and that the Residential Tenancy Branch provided him with the wrong information and advice.

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons

identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, the following, which were the reasons identified on his 1 Month Notice and relate to section 56 of the *Act*:

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(iii) put the landlord's property at significant risk;

(v) caused extraordinary damage to the residential property...

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for his 1 Month Notice to take effect on February 28, 2018, just twenty days after this hearing date on February 8, 2018.

The landlord did not produce any third party, independent witnesses to testify at this hearing. The landlord did not produce any police reports or police officers to testify at this hearing, despite the fact that he said the police arrested the tenant under the *Mental Health Act*. He produced a police business card with a file number and asked me to investigate the issue after the hearing, which I informed him I was unable to do. In any event, the police released the tenant after three hours on the same day and she returned to the rental unit.

The landlord produced his own written statement about a telephone conversation with an SPCA officer but did not produce an independent statement from that witness. He said that the officer would not release his report to the landlord but that I could contact him after the hearing to obtain the report, which I told the landlord I was unable to do because the tenant must have notice and be served with this report prior to the hearing. Although the landlord produced a number of photographs and his own written statements, he referenced very few of them during the hearing.

I also find that from the time that the landlord discovered the issues with the rental unit on December 24, 2018, to the time when he issued the 1 Month Notice on January 8, 2018, a period of 15 days, the landlord did not demonstrate urgency. Further, the landlord did not call the fire department, which has a hoarding section, to inspect the rental unit, despite the fire hazards that he was claiming inside the unit and the fact that he claimed this was a hoarding situation. The landlord claimed \$20,000.00 in damage to the rental unit based on his own

guess. He did not provide any independent estimates of the damage. The landlord identified issues of cleanliness inside the rental unit but did not show why he could not wait for the 1 Month Notice to take effect.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

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 08, 2018

Residential Tenancy Branch