



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 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 from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-landlord AW (the "landlord") primarily spoke for both co-landlords. The tenant was primarily represented by his counsel.

As both parties were in attendance I attempted to confirm service. The tenant confirmed that they were served with the landlords' application for dispute resolution. I find that the application for dispute resolution was served in accordance with section 89 of the *Act*. While the landlord testified that they personally served the tenant with the evidentiary package the tenant disputed that they were served with the landlord's evidence.

I advised the parties that I would only consider those pieces of evidence included in the landlord's package that the tenant confirmed having received on prior occasions (e.g., a copy of the tenancy agreement; prior correspondence between the parties). I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure, which outlines the circumstances whereby an Arbitrator can consider late evidence.

Preliminary Issue – Adjournment Request

At the outset of the hearing, the tenant's counsel made a request that the hearing be adjourned. Counsel said that they are waiting on medical records and a police report in regards to an incident that occurred on February 22, 2018. They submit that the records are material to the present matter and they require the written records to respond to the landlords' allegations. The landlord did not consent to the hearing being adjourned and rescheduled.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- 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.

I find that there is little prejudice to the tenant to proceed with a hearing. The onus is on the applicant to prove their claim on a balance of probabilities. The landlord testified that they do not have the tenant's medical records or police report and little documentary evidence in regards to the alleged incident of February 22, 2018. Under the circumstances, I find that the tenant has not met the criteria established for granting an adjournment and proceeded with the hearing.

Issue(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 fixed term tenancy began in May 2017 and is scheduled to end May, 2018. The rental unit is a suite in a detached home with other tenants occupying other units in the building. The landlord testified that the tenant allowed candles to burn on mantle in the rental suite causing damage to the tenant's television and the ceiling. The landlord gave evidence that the tenant caused damage to the rental unit and chose not to inform the landlords. The landlord believes that the tenant is a source of danger to the rental property and the safety of other occupants due to this incident.

The landlord testified that the tenant has made verbal threats, conducted himself in an aggressive manner and that the other occupants of the rental building have expressed their concern and fear for their safety. The landlord submits that there was an incident between the tenant and an individual contracted for pest control services where the contractor reported being confronted by the tenant.

The tenant generally disputes the landlord's evidence. The tenant testified that the incident with the candles was a one-time occurrence. The tenant said that he has never threatened or engaged in a fight with the landlord or other occupants of the rental building.

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.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

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.

Based on the testimony of both parties and my review of the written evidence, I find that the landlord has failed to prove that any of the circumstances described above exist such that it would be unreasonable or unfair to the landlord or other tenants to serve the tenant with a notice to end tenancy under section 47 of the *Act* and wait for that notice to take effect.

While I accept the landlords' evidence that there was some smoke damage caused by the tenant and that there have been aggressive verbal exchanges I do not find that circumstances are such that it would be unreasonable or unfair to wait for a notice to end the tenancy to take effect. Being berated and insulted by the tenant may be hurtful and unpleasant but I find that it is insufficient to establish a basis for an early end to the tenancy.

There is insufficient evidence to conclude that the incident with candles causing damage was anything other than a one-time occurrence. I find that there is little independent documentary evidence in support of the landlord's testimony that the other occupants of the building have complained about the tenant and believe him to be a danger. Even if this were the case I find there is insufficient evidence to determine that this tenancy could not end by way of a notice under section 47.

As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlord's application for an early end to this tenancy.

As I have dismissed the landlord's application the landlord is not entitled to recover the filing fees.

Conclusion

I dismiss the landlord's application without leave to reapply. This tenancy will continue 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: March 1, 2018

Residential Tenancy Branch