Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES INCORPORATED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with 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 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 their sworn testimony, and to make submissions. The tenant stated that he did not receive the landlord's Application for Dispute Resolution ("ADR"). The landlord provided Canada Post tracking information that proved she sent the landlord's ADR to the tenant via registered mail on February 23, 2018 and that it was signed for at the residence. The tenant stated that he had not checked his mail in some time and therefore the package *may* have been sent to him. Given the Canada Post evidence and the testimony of the tenant regarding his failure to check his mail, I find that the tenant was deemed served with the landlord's ADR including notice of this hearing and documentary evidence on February 28, 2018 - 5 days after its registered mailing and in accordance with section 89 and 90 of the Act.

Preliminary Issue: Adjournment of Hearing

At the outset of this hearing, the tenant mentioned his lawyer several times. He stated that his lawyer would review the materials. The tenant was reminded that the hearing of this matter is the time when each party is presented with an opportunity to make submissions on their own behalf. The tenant was asked whether he was indicating he wished to adjourn this hearing in order to have his lawyer attend with him to address this matter. The tenant testified that he was going to give the landlord's ADR package to his lawyer as soon as he picked it up however he had not done so as of the date of this hearing. He requested an adjournment to speak to his lawyer and show his lawyer the landlord's materials.

Pursuant to Rule 5 of the Residential Tenancy Rules of Procedure, a party may seek the consent of the other party to reschedule a hearing prior to the date of that hearing or, alternatively, seek an adjournment at the hearing. If a party seeks an adjournment on the day of

the hearing, when the matter is scheduled to proceed, the party must do so in accordance with Rule 7 of the Rules of Procedure,

> 7.8 … At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time… The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.
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> 7.9 … 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:
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> • 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 …

The tenant testified that he required time to provide materials to his lawyer and receive advice with respect to this matter. He testified that his lawyer would not likely attend at another hearing date. In making his application to adjourn, the tenant clearly outlined his position with respect to the landlord's application. In the course of his testimony, the tenant that he did not check his mail in order to review the landlord's materials and provide them to his lawyer. However, he also acknowledged that he had the emails from his landlord as well as the three notices provided to him with respect to his tenancy. Therefore, I find that he sufficiently understood the nature of the landlord's application and that it was because of his own neglect that he had not reviewed his materials and provided them to his lawyer.

Granting the tenant's application to adjourn this matter of the landlord's application for an early end to tenancy would thwart the very nature of the relief that the landlord sought. The application was made on an urgent basis and is entitled to be treated as such. Further, I find that granting the tenant's application in this matter would not aid or contribute to any possible resolution of this matter, based on the nature of the application made by the landlord.

It is integral to the dispute resolution process to ensure that both parties have a fair opportunity to be heard, both providing evidence and making submissions in a prepared and considered way. I find the tenant has had a full opportunity to prepare his evidence and submissions. I find that the tenant neglected to pick up the landlord's materials. The landlord provided those materials to the tenant over one month prior to this hearing. I find the tenant had sufficient opportunity to prepare rebuttal evidence in response to the landlord's materials prior to the hearing, if he intended to do so. As the tenant does not have an entrenched right to have a lawyer present at a Residential Tenancy Branch hearing and for the other reasons provided above, I find that the tenant is not prejudiced with respect to his representation at this hearing.

I find that the tenant must rely on his own testimony to dispute the allegations and that he failed to disclose how an adjournment of this hearing would impact the hearing of this dispute. I also note that the landlord, in an application to end the tenancy, has the burden to prove that the grounds on the Notice to End Tenancy are valid and justified. Therefore, I dismiss the tenant's application for an adjournment of this hearing. I find that the tenant is not significantly prejudiced by proceeding with the hearing of his application on the originally scheduled date.

Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy?
Is the landlord entitled to recover the $100.00 filing fee for this application?

Background and Evidence

This tenancy began on November 1, 2017 as a one year fixed term tenancy. A copy of the residential tenancy agreement was submitted as evidence for this hearing by the landlord. The rental amount of $1550.00 is payable on the 1st of each month. The landlord continues to hold a $775.00 security deposit paid at the outset of the tenancy. The tenant continues to reside in the rental unit.

The landlord sought an early end to this tenancy and an Order of Possession for the rental unit. The landlord testified that she did not issue a 1 Month Notice to End Tenancy to the tenant. The landlord submitted documentary evidence including;

- Three strata letters documenting by-law infractions issued to the tenant with respect to noise and other disturbance;
- Email correspondence between the landlord and the tenant regarding the infractions; and
- A copy of a 10 Day Notice issued for Unpaid Rent to the tenant.

The three strata letters submitted by the landlord are dated December 1, 2017; January 3, 2018; and January 24, 2018. These letters infer that an escort business is being run out of the rental unit. They refer to complaints, by the concierge of the premises and occupants of the premises on the following dates: The complaints state as follows,

- December 1, 2017: a woman coming and going from the unit/building with a fob for the tenant's unit and 2 'reports' that the unit is likely being used for an escort service.
- January 3, 2018: an unknown male, coming from the tenant's unit advised that the woman in the unit is an escort.
- January 24, 2018: an aggressive woman yelled/screamed at the concierge and demanded entrance into the tenant's unit.

The landlord stated that there was video materials to support these allegations and that most of the allegations and investigation was done by the concierge in the building. In fact, all of the

reports were from the concierge in the building. The landlord did not submit video or other materials (notes or statements) from the concierge for this hearing. The landlord testified that the owner, the property management team as well as the concierge no longer feel safe with the tenant residing in the building.

The tenant joined the teleconference 5 minutes after its start and was advised of the evidence of the landlord that had been provided before his attendance: the details of his tenancy (dates and rental amounts) as well as the landlord's testimony as to service of the documents for this hearing. The tenant denied all of the landlord's allegations against him and described the allegations as defamation. He testified that he is a construction worker and that he lives in the rental unit with his pregnant girlfriend. He testified that the girlfriend has a fob for the unit but that she is not yet registered as an occupant of the unit on the lease. The tenant testified he fought with his girlfriend on the date of the third complaint in February. The tenant stated that he believes the other incidents and complaints (in December and January) likely involved his girlfriend and guests to the rental unit.

Analysis

Section 56 of the Act addresses an application for an early end to a tenancy. In order to be successful in an application for an early end to tenancy, a landlord must prove that "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 with section 47 [landlord's notice: cause] to take effect."

While I find that the landlord has raised some questions about the activities in the tenant's rental unit, I find that the landlord has not met the burden of proof to show that the current rental situation causes an immediate risk to property, occupants or the landlord requiring urgent action to end the tenancy.

I find that the landlord's evidence and testimony are insufficient to satisfy me that the tenancy should end. I find that the landlord did not provide any documentary evidence regarding investigations of the concierge or any police involvement to support the allegations stated in the by-law infraction letters. Again, the landlord provided some evidence the tenant or his guests' actions may be disturbing the peace and quiet of the building and its occupants including the concierge. However, the landlord lacks documentary support or other evidence that sufficiently shows that it would be unfair or unreasonable to wait for a notice to end tenancy for cause to come into effect. Finally, the landlord did not provide a 1 Month Notice to clarify the grounds that the landlord relied upon to end the tenancy.

I find that the landlord has not proven that this tenancy must end early as described in the landlord's application.

I dismiss the landlord's application for an early end to tenancy based on the insufficiency of evidence submitted by the landlord to show the urgency of this application. As the landlord has been unsuccessful in their application, the landlord is not entitled to recover the filing fee.

Conclusion

I dismiss the landlord's application in its entirety.

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: April 3, 2018

Residential Tenancy Branch