



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, FFT, ET, FFL

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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

The tenant applied pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for End of Employment with the Landlord pursuant to section 47; and
- authorization to recover the tenant's filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:13 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

At the hearing, the landlord and Witness HB, the landlord's fiancée, gave sworn testimony that the landlord posted a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenant's door on February 25, 2018. This 1 Month Notice sought an end to this tenancy due to the tenant's repeated late payment of rent. Both the landlord and Witness HB also provided sworn testimony and written evidence that the landlord posted a copy of the landlord's dispute resolution hearing package, including the Notice of Dispute Resolution Hearing, on the tenant's door on March 18, 2018. In accordance with sections 88, 89 and 90 of the *Act*, I find that the above documents

were deemed served to the tenant five days after they were posted on the tenant's door. As the landlord and Witness HB also testified that copies of the landlord's written evidence were posted on the tenant's door on March 19, 2018, I find that the landlord's written evidence was deemed served to the tenant on March 24, 2018 in accordance with sections 88 and 90 of the Act.

Near the conclusion of the hearing, the landlord asked for permission to obtain and submit additional written evidence from the police to confirm the content of the police reports that the landlord referenced in her sworn testimony and in the limited written evidence that she had already obtained from the police and entered into written evidence. I advised the landlord that I could only consider the written evidence that the landlord had served to the tenant in advance of this hearing. I refused the landlord's request to provide additional written evidence regarding the landlord's application.

Preliminary Issue - Tenant's Application

The landlord testified that the only notification they had received from the tenant was a Notice of Dispute Resolution Hearing to be heard on May 22, 2018 at 1:30 p.m. The landlord provided the file number noted on the first page of this decision for the May 22, 2018 hearing, which the landlord understood was to consider the tenant's application to cancel the landlord's 1 Month Notice to End Tenancy for Cause for the tenant's repeated late payment of rent.

The tenant's cross-application for the current hearing referred to a 1 Month Notice to End Tenancy for End of Employment that was never issued by the landlord. The tenant appears to have realized that they made a mistake in their application and applied to cancel a notice to end tenancy that did not exist. The tenant did not supply a copy of that 1 Month Notice, nor was the landlord aware of any ongoing application from the tenant other than the hearing scheduled to consider the landlord's 1 Month Notice for Cause issued on February 25, 2018.

Under these circumstances and as the tenant did not attend this hearing, I dismiss the tenant's application to cancel a 1 Month Notice to End Tenancy for End of Employment without leave to reapply. Since no such Notice exists, I take no further action regarding the tenant's application regarding a Notice to End Tenancy for End of Employment.

Issues(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 periodic tenancy for a lower level suite in a two unit dwelling began on October 1, 2012. The landlord resides in the other living unit of this building above the tenant's suite. Monthly rent was initially set at \$900.00, payable in advance by the first of each month. The landlord testified that the rent is currently set at \$1,000.00. The landlord continues to hold the tenant's \$450.00 security deposit paid on October 1, 2012.

The landlord said that there have been eight other dispute resolution hearings regarding this tenancy. At the current time, the landlord said that the only 1 Month Notice issued to the tenant is for the late payment of rent.

The landlord's application for an early end to this tenancy related to a number of recent incidents. Although the landlord cited two police reports from March 1 and 2, 2018, the landlord did not submit the content of those police reports. The tenant's name did not appear on correspondence from the police department that the landlord entered into written evidence. A March 12, 2018 letter from the police confirmed that the landlord was the complainant in two police reports. One of these was for "uttering threats against person." The other was for "mischief-loss of enjoyment."

The landlord maintained that at approximately 10:30 p.m. on March 1, 2018, the tenant caused a major disturbance to the landlord, the landlord's family and the neighbours when the tenant started "throwing and smashing" his own household items and trash into the backyard of this rental property. The landlord claimed that the tenant was swearing and acting in a threatening manner and causing stress and fear to the landlord's family and neighbours. The landlord called the police to attend. No charges were laid as a result of this incident, although the landlord presented evidence that a police file was created regarding her complaint about the tenant's actions that evening.

The landlord alleged that the tenant caused a "tripping/safety hazard and property damage" through these actions. The landlord entered into evidence photographs of the aftermath of the debris thrown into the snow-covered backyard of this property, noting that nails and broken items caused a safety hazard for the landlord, the landlord's children and the landlord's dogs, who would normally be allowed into this area of this property. The landlord was also concerned about red powder that remained after the tenant had the debris cleared from the property three days after this incident.

The landlord gave sworn testimony supported by her written evidence that at 6:30 a.m. on March 2, 2018, the tenant threatened to murder the landlord. The landlord said that the police were unwilling to lay charges against the tenant as the landlord was the only one who heard this threat.

The landlord and Witness HB testified that the landlord's actions and behaviours are threatening and worrying to the landlord and her family. The landlord submitted a letter from their doctor confirming that the landlord is experiencing anxiety and stress as a result of the tenant's actions. The landlord and both of the landlord's witnesses testified that there has been a long history of noise, loud music and unacceptable behaviours exhibited by the tenant during this lengthy tenancy. Witness HB said that they are afraid of interacting with the tenant who is impulsive and threatening. Witness HB also noted that he can hear the tenant "singing in the shower" which is also troublesome.

The landlord and the landlord's witnesses also maintained that there is marijuana smoke emanating from the tenant's rental unit on an ongoing basis.

The landlord also gave sworn testimony and written evidence regarding another occasion when the landlord had to call the police to dissuade the tenant from playing loud music late in the evening. As this incident happened after the landlord applied for an early end to this tenancy, I am unable to attach significant weight to this incident. It also appears that allegations regarding the playing of loud music into the evening have been an ongoing concern of the landlord.

The landlord also entered into written evidence a statement indicating that the property had been listed for sale as of the date of this hearing.

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. 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.

In this case, the landlord's only current 1 Month Notice is for the alleged late payment of rent. Although the late payment of rent is a reason for ending a tenancy for cause pursuant to section 47 of the *Act*, it is important to note that this is not one of the reasons included in section 56 for ending a tenancy early.

As outlined above, there are clearly two separate components to section 56 of the *Act*., both of which need to be met in order for the landlord to obtain an early end to a tenancy. The second component requires that the landlord demonstrate that it would be unreasonable or unfair to wait for consideration of a standard Notice to End Tenancy for Cause to be considered. In this case, the only 1 Month Notice issued to the tenant has been for the late payment of rent and not for any of the behaviours or actions that have prompted the landlord to seek an early end to this tenancy.

Other than the incident of March 1 and the alleged threat made by the tenant on March 2, the landlord and the landlord's witnesses confirmed that many of the tenant's actions and behaviours have been ongoing throughout much of this tenancy. While I can appreciate that these ongoing disputes are no doubt troubling to the landlord, this does not support the landlord's assertion that it would be unreasonable or unfair to the landlord, her family or others to allow the tenancy to continue until a 1 Month Notice could take effect. With the exception of the March 1 and March 2 incidents, it appears that the behaviours and actions for which the landlord is seeking an early end to this tenancy are behaviours that have been consistently unacceptable to the landlord and an ongoing feature of this tenancy. The *Act* allows landlords to seek an end to a tenancy

for cause for these types of ongoing actions and behaviours. Section 56 of the *Act* is reserved for situations where a tenant's actions have escalated to the extent that the delay involved in issuing a 1 Month Notice for Cause and waiting for that Notice to take effect would be unreasonable or unfair.

The landlord's application for an early end to this tenancy rests primarily on the two incidents of March 1 and March 2.

With respect to the first incident of March 1, I find insufficient basis to the landlord's claim that the landlord's safety and the safety of her family and household have been compromised to the extent that this tenancy should be ended without the issuance of a 1 Month Notice for these behaviours and actions. While no doubt disturbing, I do not share the landlord's view that the incident of March 1, and the debris and garbage dumped on the landlord's snow-covered backyard for three days constituted sufficient reason to end this tenancy early. Although the police did attend that night, there is no evidence that the tenant was charged with any offence. The tenant also took action to remove the items within three days. I also take into account that no 1 Month Notice was issued with respect to this incident.

The landlord gave undisputed sworn testimony that the tenant uttered a death threat against her on the morning of March 2, the morning after she called the police regarding the tenant's behaviours the night before. While this is a very serious allegation, the landlord testified that there were no witnesses to this threat. The landlord confirmed that the police are not pressing charges against the tenant. Given the lengthy history of the landlord's thus far unsuccessful attempts to end this tenancy, I find that the landlord would require more corroborating evidence than the landlord's claim that the tenant uttered a threat to her that was not heard by anyone else to end this tenancy early without the issuance of a 1 Month Notice for Cause.

I find that the landlord has produced very little evidence to demonstrate that it would be unreasonable or unfair to the landlord or the landlord's family to wait until an application to obtain an Order of Possession based on a 1 Month Notice could take effect. Most of the behaviours the landlord and the landlord's witnesses, one of whom is the fiancée of the landlord, cited at the hearing are behaviours that have been ongoing for a long time.

Under these circumstances, I find that the landlord has provided insufficient reasons as to why this tenancy cannot continue until May 22, when the tenant's application to cancel the 1 Month Notice the landlord issued regarding the late payment of rent is considered. I find that the May 22 hearing would be the appropriate forum to consider

whether the landlord's existing 1 Month Notice presents sufficient reason to end this tenancy for cause. In coming to this determination, I note that the landlord has not issued a 1 Month Notice for any of the reasons cited in her request for an early end to this tenancy; instead, requesting an early end to this tenancy. For these reasons, I dismiss the landlord's application for an early end to this tenancy in its entirety.

Conclusion

I dismiss the landlord's application for an early end to tenancy and recovery of the application fee. This tenancy continues until ended in accordance with the *Act*.

The tenant's application to cancel a 1 Month Notice to End Tenancy for End of Employment is dismissed without leave to reapply as no such Notice was issued.

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 06, 2018

Residential Tenancy Branch