



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 two tenants did not attend this hearing, which lasted approximately 29 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 testified that the tenants were each served separately with the landlord's application for dispute resolution hearing package on April 1, 2018, by way of registered mail. The landlord provided two Canada Post receipts and tracking numbers with his application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on April 6, 2018, five days after their registered mailings.

I notified the landlord that I could not consider the one video that he submitted as evidence with his application because he did not serve it to the tenants in accordance with section 88 of *Act*, which does not permit sending a video by way of text message.

The landlord testified that the tenants were served with the landlord's 1 Month Notice to End Tenancy for Cause, dated March 10, 2018 ("1 Month Notice") on the same date by way of posting to the rental unit door. The effective move-out date on the notice is April 10, 2018. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's 1 Month Notice on March 13, 2018, three days after its posting.

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 November 17, 2017 for a fixed term ending on May 31, 2018 after which the tenants are required to vacate the rental unit. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenants continue to reside in the rental unit.

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

- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
 - *damage the landlord's property;*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*
- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;*
- *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 tenants caused extraordinary damage to the rental unit by allowing a dog to defecate in the yard, which will cost approximately \$200.00 to clean up. He said that one of the tenant's boyfriends destroyed the fence at the rental property, which will cost \$600.00 to fix. The landlord did not provide the quotes for these repairs to be done, indicating that no one told him to do so. He claimed that it was "extraordinary damage" because he has a low monthly income and \$800.00 from his income to repair the above issues was extraordinary to him. He provided photographs of the rental property, showing the dog feces in the yard, as well as text messages asking the tenants to clean the dog feces. He said that the tenancy agreement does not allow pets to be at the rental property and the tenants did not pay a pet damage deposit so it was a material breach of the tenancy agreement.

The landlord said that when he was showing one of the units at the rental property to a prospective tenant, and he asked one of the tenants to clean the dog feces, her boyfriend aggressively approached the landlord and broke the fence. The landlord explained that he does not feel safe attending at the rental property and he cannot show it to prospective tenants in order to rent it out. He said that he called the police because of the above incident, they attended at the rental property but did not file any criminal charges, and they told the landlord to

try to settle the matter because it was a tenancy issue for the Residential Tenancy Branch. He stated that the police told him that the tenants are allowed to have guests at the rental property and because the landlord did not suffer any physical touching or harm, they could not file any charges. The landlord claimed that he had a police file number but not a police report because it takes 45 days to obtain the report and he requested it a couple of weeks before this hearing.

Analysis

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:

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) 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, or...

(v) caused extraordinary damage to the residential property and

(b) 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 section 47 [landlord's notice: cause] to take effect.

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 the corrected effective date of April 30, 2018 (pursuant to section 53 of the *Act*), just twelve days after this hearing date on April 18, 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 attended at the rental property due to his complaint. The police did not find it necessary to file any criminal charges against the tenant's boyfriend,

indicating he had not physically harmed the landlord. The landlord was told by the police to settle the matter because it was a tenancy issue.

The landlord claimed \$800.00 in damage to the rental property based on estimates which he did not provide prior to the hearing, despite filing this application on March 26, 2018. The landlord 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 tenants.

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: April 19, 2018

Residential Tenancy Branch