



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY 2 CITY REAL ESTATE SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 11, 2018 (the "Application"). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the "Act"). The Landlord also sought reimbursement for the filing fee.

The Property Manager appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenants. The hearing process was explained to the Property Manager who did not have questions when asked. The Property Manager provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. I addressed service of the hearing package and Landlord's evidence. The Property Manager said he served the hearing package on Tenant L.H. by registered mail to the rental unit on April 16, 2018. The Property Manager said he did not know if Tenant L.H. still lived at the rental unit in April but said he did not have information that Tenant L.H. had moved and had not received anything from Tenant L.H. ending the tenancy. The Property Manager had submitted a receipt and Customer Receipt from Canada Post with Tracking Number 1 on it. The Customer Receipt indicates Tenant L.H.'s first name and the postal code of the rental unit. With the permission of the Property Manager, I looked up Tracking Number 1 on the Canada Post website. The website shows the package was delivered April 18, 2018. There is a signatory name of "A P". The Property Manager did not know who "A P" is.

The Property Manager said he sent the hearing package to Tenant M.A. by registered mail on April 16, 2018 to Address 1. The Property Manager said Tenant M.A. had moved out of the rental unit and provided Address 1 as her forwarding address. The Property Manager said the package was returned to him. The Property Manager submitted a photo of the package. It has a note saying, "DOESN'T LIVE HERE" and a return to sender sticker with "Moved/Unknown" checked. The Landlord had submitted the text message from Tenant M.A. providing her forwarding address. I noted there was no postal code on the package sent by the Property Manager to Tenant M.A. other than one written in at the bottom which is different from the postal code provided by Tenant M.A. The Property Manager said the postal code provided by Tenant

M.A. was written on the top of the package. The Property Manager said Tenant M.A. never provided an updated forwarding address.

The Property Manager said he served the evidence on Tenant L.H. on April 24, 2018 by registered mail to the rental unit. He said he served the evidence on Tenant M.A. on April 24, 2018 by registered mail to Address 1 and that this was returned to him.

Based on the undisputed testimony of the Property Manager, the evidence submitted and the Canada Post website, I find Tenant L.H. was served with the hearing package in accordance with section 89(2)(b) of the *Act*. Based on the undisputed testimony of the Property Manager, I find Tenant L.H. was served with the evidence in accordance with section 88 of the *Act*. I also find the hearing package and evidence were served in sufficient time to allow Tenant L.H. to prepare for and appear at the hearing.

Based on the undisputed testimony of the Property Manager and the evidence submitted, I find Tenant M.A. was served with the hearing package in accordance with section 89(2)(b) of the *Act*. Based on the undisputed testimony of the Property Manager, I accept that he sent the package to the forwarding address provided by Tenant M.A. This is the address Tenant M.A. chose to provide as her forwarding address and the Property Manager was entitled to rely on it. Based on the undisputed testimony of the Property Manager, I find Tenant M.A. was served with the evidence in accordance with section 88 of the *Act*. I also find the hearing package and evidence were served in sufficient time to allow Tenant M.A. to prepare for and appear at the hearing.

I was satisfied with service and proceeded with the hearing in the absence of the Tenants. The Tenants had not submitted evidence prior to the hearing. The Property Manager was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence of the Landlord and oral testimony of the Property Manager. I will only refer to the evidence I find relevant in this decision.

Issue(s) to be Decided

1. Should the Landlord be granted an order ending the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

The Landlord submitted a written tenancy agreement as evidence. The agreement is between the Landlord and the Tenants regarding the rental unit. The tenancy started November 15, 2017 and is for a fixed term ending November 30, 2018. The rent is \$3,000.00 per month due on the first of each month. The agreement was signed by the Property Manager and Tenant M.A but not Tenant L.H.

The Property Manager said Tenant M.A. and Tenant L.H. applied for the rental unit together. He said the tenancy agreement was sent to the Tenants by email. He said he could tell through the program used that Tenant L.H. opened the document. He said there was a discussion between him and Tenant L.H. about Tenant L.H. signing the agreement. He said Tenant L.H. said he would sign the agreement after he moved into the rental unit but never did.

The Property Manager said he received text messages from Tenant M.A. about ending the tenancy in relation to her; however, this is the only correspondence he received in this regard.

The Landlord had submitted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a One Month Notice to End Tenancy for Cause (the "One Month Notice"). The One Month Notice was based on "[an] order from the city of Vancouver to remove the RV trailer from the property on or before March 23, 2018". I explained to the Property Manager that section 56 of the *Act* is for urgent situations and that the proper avenue to obtain an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities or the One Month Notice is through section 55 of the *Act*.

I asked the Property Manager why it would be unreasonable or unfair to require the Landlord to obtain an Order of Possession through the proper avenue. The Property Manager said the Tenants put garbage everywhere in and outside the house. He said this will devalue the rental unit. He said the garbage damages the rental unit because it smells and is dirty. He said the garbage will attract animals, rats and mice. He said he had gone to the property and observed garbage twice, in April and May. He said he observed garbage in the house both times but did not know if the garbage had been left in the house throughout that period. He did not know how long the garbage is left in and around the rental unit for. He said the garbage is the reason police attend the rental unit.

The Property Manager then said police go to the rental unit because the people staying there are dangerous. He said police attended and searched the rental unit and found stolen items and that he knew this because the police called and told him. He said there has been three or four police incidents. He did not have any details about these police incidents other than the incident where police searched the house and located stolen items. The Property Manager said he had not called police about the Tenants. He said someone staying at the rental unit is "really bad", has a bad background, is dangerous and has a criminal record. I am unsure whether the Property Manager was referring to Tenant L.H. or someone else. I asked how he knew about the criminal record and he said he just assumed this because the police said they found stolen items in the rental unit.

Analysis

Based on the undisputed testimony of the Landlord, I find there is an oral tenancy agreement between the Property Manager and Tenant L.H. in the same terms as the written agreement. Based on the undisputed testimony of the Landlord, I find Tenant M.A. continues to be a tenant

under the tenancy agreement as the parties have not ended the agreement in accordance with section 44 of the *Act*.

Section 56 of the *Act* allows an Arbitrator to end a tenancy early where two conditions are met. First, the tenants, or a person allowed on the property by the tenants, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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 (c) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

As applicant, the Landlord has the onus to prove the circumstances meet this two-part test.

Section 56 of the *Act* is not the proper avenue for seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities or the One Month Notice. An Order of Possession should be sought under section 55 of the *Act*.

I do not accept that it would be unreasonable or unfair to require the Landlord to obtain an Order of Possession through the proper avenue based on the Tenants leaving garbage in and around the rental unit. Therefore, I find the Landlord has not met the second part of the test under section 56 of the *Act* in relation to the garbage issue.

Further, I find the Landlord has not provided sufficient evidence regarding the alleged police incidents to allow me to find the test under section 56 of the *Act* has been met. I find much of the evidence on this point to be bald assertions by the Property Manager that people staying at the rental unit are bad people without any substantive evidence to support these assertions.

Given the Landlord has failed to meet the two-part test under section 56 of the *Act*, I dismiss the Application including both the request for an Order of Possession and reimbursement for the filing fee. The Application is dismissed without leave to re-apply.

The Landlord may want to contact the Residential Tenancy Branch and speak to an Information Officer about how to proceed in the circumstances.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 29, 2018

Residential Tenancy Branch