Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THREE CEDARS HOLDING LTD.
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 May 17, 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.

C.S., the Property Manager, appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. The Property Manager provided affirmed testimony.

The Property Manager provided the correct legal name of the Landlord at the outset of the hearing and I amended the Application to reflect this. This is the name included in the style of cause.

At the start of the hearing, the Property Manager said the Tenant has been admitted to hospital and has moved out of the rental unit. She said his possessions have been removed from the unit as well. I told the Property Manager that the issue raised in the Application seemed to be a moot point. The Property Manager took the position that it is not a moot point because the Landlord has not received the keys back or been able to do a move-out inspection. The Property Manager said the Landlord wants to be able to change the locks and wants an Order of Possession to ensure that the Landlord is entitled to possession of the unit.

The Property Manager also said the Landlord wants to go ahead with a request to keep the security deposit. I told the Property Manager I would not amend the Application to include a request to keep the security deposit given this was an application under section 56 of the *Act* which should not be combined with a request for a monetary order

and given the Tenant was not at the hearing and would have had no notice of this request.

Given the Property Manager's position that the issue raised in the Application was not a moot point, I proceeded with the hearing.

The Landlord had submitted evidence prior to the hearing. The Property Manager testified that the hearing package and evidence were sent by registered mail to the rental unit on May 29, 2018. She testified that the Tenant was in the hospital at the time but the rental unit was still his residence. She said the Tenant's care workers were coming and going from the residence at the time.

The Property Manager provided Tracking Number 1 as noted on the front page of this decision. With the permission of the Property Manager, I looked up Tracking Number 1 on the Canada Post website. It shows the package was delivered and signed for June 15, 2018. The signatory name is indicated on the front page of this decision. The Property Manager testified this is the Tenant's care worker. This is supported by a photo submitted by the Landlord of a letter regarding the Tenant that refers to this individual as his Nurse Case Manager.

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

As I was satisfied with service, I proceeded with the hearing in the absence of the Tenant. The Tenant 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 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 had submitted a written tenancy agreement. The Property Manager did not know who the landlord in this tenancy agreement was as it was a previous owner of the rental unit and the writing is unclear. I am not able to determine who the landlord was either. The Tenant is listed as the tenant. The tenancy started in September of 1991 and was a month-to-month tenancy. The Property Manager testified rent was $997.00 as of June of this year. She said the property was purchased by the current Landlord.

The Property Manager submitted that the Tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property" and "caused extraordinary damage to the residential property".

The Property Manager testified as follows. The Landlord had served a One Month Notice to End Tenancy for Cause (the "Notice") on the Tenant in January. The Notice was effective February. The Landlord had a conversation with the Tenant's care workers who said the Tenant would be homeless if the Landlord evicted him. The Tenant was on a waiting list for a care home. The Landlord thought the placement of the Tenant in the care home was imminent. The care workers said they would ensure the Tenant's needs were taken care of while he remained in the unit. The Tenant's living situation improved after the Notice was served on him. The Tenant was allowed to stay in the unit on a "use and occupancy only" basis. The Landlord submitted receipts for March 1st, April 1st and April 30th payments showing this.

The Property Manager further testified as follows. During the week of May 27th or 28th, Emergency Medical Services ("EMS") attended the unit four or five times over two or three days. At this point, it was determined that the living situation of the Tenant had not improved. The toilet was blocked and overflowing. The Tenant's bed was soaked with urine. The unit was not clean. The smell from the unit was overpowering. At this point, the Landlord decided it was urgent to take possession of the unit to prevent further damage to the unit and further disturbance of other occupants. The bed was removed and the area around it was sanitized.

The Property Manager testified the smell from the unit disturbed other occupants of the building. She submitted that the EMS visits also disturbed other occupants. She said EMS cannot access the building so buzz the Tenant and building manager which wakes the building manager up. She testified that EMS then brings their equipment up and stands in the hallway talking loudly to the Tenant. She said this blocks the hallway. She testified that EMS leaves the door to the rental unit open and the smell escapes

into the hallway making it worse. The Property Manager agreed no evidence had been submitted supporting her position that other occupants of the building are disturbed by EMS or the smell. She said the complaints have been verbal.

The Property Manager submitted the Tenant has caused extraordinary damage to the floor of the rental unit. She testified that a section of the floor must be replaced due to damage from urine soaking into it. She testified that the restoration company that removed the bed said that this section of the floor must be replaced at a minimum. She said a second portion of the floor near the bathroom may also have to be replaced. She submitted photos supporting her evidence in this regard.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early where two conditions are met. Here, the Landlord must first prove the Tenant has either:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or

2. Caused extraordinary damage to the residential property.

Second, the Landlord must prove that it would 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 the applicant, the Landlord has the onus to prove the circumstances meet this two-part test.

I am not satisfied the Landlord has met their onus to prove the Tenant has “significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property”. The Landlord has not submitted any complaints from other occupants of the building or the building manager regarding the EMS visits or the smell. This is the type of evidence I would expect to see if other occupants or the building manager were disturbed to such an extent that an urgent order ending the tenancy under section 56 of the *Act* was justified.

I accept the undisputed testimony of the Property Manager that parts of the floor in the unit must be replaced due to urine soaking into them. This is supported by the photos submitted. I make no findings regarding whether this amounts to extraordinary damage

given my decision on the second part of the test under section 56 of the *Act* as set out below.

I do not accept that it would be unreasonable or unfair to require the Landlord to seek an Order of Possession through the usual process under section 55 of the *Act*. The Landlord had issued the Notice in January with an effective date of February. The Landlord allowed the Tenant to stay in the unit on a "use and occupancy only" basis. I am not satisfied that it would have been unreasonable or unfair to expect the Landlord to apply for an Order of Possession under section 55 of the *Act* based on the Notice in May when it was determined that the Tenant's living situation had not improved. Orders under section 56 of the *Act* are reserved for the most serious circumstances where a tenant poses an immediate and severe risk to the rental property or others. I am not satisfied this is such a circumstance.

I note that I make no findings in relation to the validity of the Notice, or whether an Order of Possession would be issued based on the Notice, given that is not the issue before me.

I also note that, as of the date of the hearing, the Tenant had vacated the rental unit. I therefore cannot accept the submission that an Order of Possession is required on an urgent basis to ensure no further damage is caused to the unit or disturbance caused to other occupants of the building.

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.

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: June 28, 2018

Residential Tenancy Branch