



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:23 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided undisputed sworn testimony supported by witnessed written evidence that he posted a copy of the dispute resolution hearing package on the tenant's door on May 23, 2018. I find that the tenant was deemed served with this package in accordance with paragraph 89(2)(d) and section 90 of the *Act* on May 26, 2018, the third day after it being posted.

Although the landlord submitted what he maintained were text messages between the landlord and the tenant, and a copy of a criminal record check he had conducted on a website to the Residential Tenancy Branch (the RTB), the landlord said that he had not provided a copy of this written evidence to the tenant. As I noted at the hearing, the principles of natural justice prevent me from considering written evidence that would

adversely affect a party if that information has not been shared with the other party, as the Respondent has a right to know the case against them. Information about providing the RTB and the other party with written evidence is included in the information provided to parties to dispute resolution hearings. I am unable to consider the landlord's written evidence that could adversely affect the tenant as it has not been served to the tenant in accordance with section 88 of the *Act* or the principles of natural justice

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

The landlord testified that this tenancy is for a basement suite in the landlord's home where the landlord resides upstairs. The landlord said that this tenancy began in June 2017, at which time the tenant entered into a written fixed term tenancy agreement that was to run until May 31, 2018. Monthly rent is set at \$1,100.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$550.00 security deposit paid when this tenancy began.

The landlord testified that the tenant has failed to pay rent for May and June 2018, and has not paid for utilities for a number of months. Although the landlord did not provide a copy of this information as part of his application for an early end to this tenancy, the landlord said that he issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant on May 11, 2018 for unpaid rent owing for May and unpaid utilities. The landlord testified that he has a dispute resolution hearing scheduled for July 11, 2018, to consider his application for an Order of Possession based on the 10 Day Notice.

The landlord confirmed that he has not issued any 1 Month Notice to End Tenancy for Cause (a 1 Month Notice), which would be issued pursuant to section 47 of the *Act*.

In the absence of any written evidence other than the limited information the landlord provided in his application for dispute resolution, the landlord's application for an early end to this tenancy rested solely on the landlord's sworn testimony.

The landlord testified that the tenant has treated him badly and was "totally out of control." The landlord said that the tenant told him that he would "screw him up like

others before." As the landlord did not understand what the tenant was referencing, the landlord asked the tenant to confirm that he had "screwed up" some people in the past. The tenant confirmed that he had "screwed people up" before.

As the landlord was concerned about his safety, the landlord contacted the local police and was referred to a government website where the landlord discovered that the tenant had been convicted of a *Criminal Code of Canada* offence involving weapons in the past. The landlord said that he had a police file number regarding his contact with the police about the tenant, but had no details regarding any action being taken by the police to follow up on this matter. I noted that I had no access to police files that are not entered into written evidence. The landlord said that he is constantly worried that he has properly locked his portion of the house so as to prevent the tenant from acting violently against him and his family.

While the landlord confirmed that the tenant has advised him that he plans to vacate the rental unit by the end of June, the landlord expressed concern that this may not happen. The landlord said that when the tenant does vacate the rental unit, there remains unpaid utility bills and potential damage that may have been inflicted on the suite by the tenant.

The landlord maintained that there was a very definite safety risk in allowing this tenancy to continue, even until the end of the month or until July 11, 2018, the date of the scheduled hearing of the landlord's application to end this tenancy on the basis of the 10 Day Notice.

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 has not issued a 1 Month Notice, but has a hearing scheduled in less than three weeks to consider his application to end this tenancy for unpaid rent.

While I have given the landlord's sworn testimony careful consideration, I find that the landlord has not met the burden of proof requiring that it would be unreasonable or unfair to allow this tenancy to wait until a notice to end this tenancy for cause, based on an as yet unissued 1 Month Notice to take effect. The landlord produced no written evidence that could be considered for this hearing and produced no witnesses to support his safety concerns.

The landlord has interpreted the tenant's statement that he planned to "screw up" the landlord as a threat; however, he could offer no evidence that the tenant has been charged with uttering any threat. I find that the vagueness of the tenant's statement does not necessarily mean that the tenant was threatening the landlord or his family with violence; it could be interpreted many ways. I find that the landlord's claim that there was a past incident where the tenant had been convicted of a criminal offence with a weapon does not mean that the tenant was intending to threaten the landlord with violence. The tenant's failure to pay his rent for May or June, or to pay utility bills could be interpreted as the action the tenant was referencing. The text messages also revealed that the tenant may have been planning other actions of a non-violent manner that would accomplish the same objective.

The landlord's description of his interaction with the RTB and his comments during this hearing revealed that he believed that RTB representatives were responsible for any deficiencies in the process he had followed and in his provision of evidence. However, his description of this interaction revealed that he presented his circumstances in such a way as to seek the quickest way possible to end this tenancy. While an early end to tenancy does provide a swift method of obtaining a hearing of a landlord's application,

this is an expedited mechanism, which is only available when there is clear evidence that a tenancy cannot continue until such time as the more standard 1 Month Notice can lead to an end to a tenancy. The mechanism selected by the landlord was the only one available to him to obtain the type of immediate eviction the landlord was seeking. The landlord's concerns regarding potential damage to the suite and his ability to locate the tenant so as to claim for unpaid rent and utilities after this tenancy ends also suggested that the landlord was seeking a way to circumvent the usual time frames for considering applications for dispute resolution for these types of disputes.

In this case, the landlord has a hearing scheduled for July 11, 2018, to consider his application to end this tenancy for unpaid rent on the basis of his 10 Day Notice of May 11, 2018. If successful in that application, this tenancy could be ended fairly quickly and before any new 1 Month Notice could take effect.

Under the circumstances, I find that the landlord has fallen short of establishing sufficient grounds for ending this tenancy early pursuant to section 56 of the *Act*, and without issuing any 1 Month Notice for cause pursuant to section 47 of the *Act*. I find that the landlord has produced very little evidence to demonstrate that it would be unreasonable or unfair to wait until an application to obtain an Order of Possession based on the 1 Month Notice could take effect. For these reasons, I dismiss the landlord's application in its entirety.

Conclusion

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

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: June 21, 2018

Residential Tenancy Branch