



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* ("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, pursuant to section 72.

LS attended the hearing on behalf of both tenants. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant LS confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the Act, I find that the tenants were duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This fixed-term tenancy began on September 1, 2017. Monthly rent is set at \$1,600.00, payable on the first of the month. The tenants paid a \$800.00 security deposit for this tenancy, which the landlord still holds.

The landlord testified that on May 2, 2018 she conducted a scheduled inspection of the tenants' rental unit and was disturbed at what she had discovered. The landlord testified that her belongings were removed from her secured storage without her permission, and several of her items were found in the tenants' rental unit. She also found out that the tenants had changed the locks without her knowledge or permission, and that they were possession of a dog and possibly a cat, both of which she had no knowledge of, or gave permission for. The landlord also discovered much of the rental unit was damaged. The landlord notified the police, who attended the unit many hours later. The landlord gave undisputed testimony that the police executed a search warrant the next day, and discovered various drug paraphernalia as well as identity documents that do not belong to the landlord or any of the tenants on the tenancy

agreement. The landlord testified that no charges have been approved at the time of the hearing, but that charges were pending crown's approval. The landlord also expressed concern at the numerous complaints by strata council and other owners about the behaviour of the tenants, and the numerous bylaw infractions and fines received.

The landlord called two witnesses during this hearing. One witness testified that she witnessed the tenant LS kick in a door, and both witnesses confirm that they personally witnessed the landlord and the tenant LS sign the Mutual Agreement to End Tenancy, dated May 2, 2018 for the tenancy to end on May 12, 2018. The tenant disputes signing this Mutual Agreement to End Tenancy or the tenancy agreement submitted in the landlord's evidence, stating that the signatures were fraudulent.

The landlord testified that the tenants were in arrears for their rent and utility payments, and that a hearing is currently scheduled pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant admits possession of the dog, but disputes kicking down the door, or having any knowledge of how the landlord's personal belongings ended up inside his rental unit. The tenant LS testifies that his son does stay in the rental unit on occasion.

Analysis

The landlord, in her application, requested an Order of Possession on the grounds that the tenants pose a severe and immediate risk to her, other occupants, and the property. The landlord also testified that the tenant LS had signed a Mutual Agreement to End Tenancy, and had agreed to move out on May 12, 2018, but has not.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, I need to be satisfied that the tenants have 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.

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord submitted, in evidence photos of the property, as well as documentation in support of her testimony that the tenants posed an immediate risk or danger to the landlord, other occupants, and her property. The landlords testified that the police have attended the property on more than one occasion, one of which was to execute a search warrant of the rental unit.

Although both parties acknowledged the issuance of a 10 Day Notice to End Tenancy pursuant to section 46 of the *Act*, the landlord has not issued any notices to end tenancy for cause pursuant to section 47 of the *Act*. This would be the usual first step for a landlord seeking an early end to tenancy. The landlord, in her application, is attempting to obtain an early end to tenancy as she believes the tenants should have vacated the property in May of 2018 pursuant to a Mutual Agreement to End Tenancy, and because the landlord feels that the tenants posed a risk or danger to others, and the landlord's property.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although I find that the landlord testified that a Mutual Agreement to End Tenancy was signed by both parties, the landlord did not make an application for an Order of Possession pursuant to that Mutual Agreement. Despite the landlord's concerns about the tenants' possible breaches of the tenancy agreement and *Act*, the landlord has not issued the tenants any 1 Month Notices to End Tenancy for Cause. I find that the landlord's failure to pursue an Order of Possession pursuant to a 1 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. Although the landlord has provided supporting evidence to demonstrate that there is evidence of possible criminal activity, no charges regarding the incidents have been approved at the time of the hearing. I also find that although it is disturbing that the landlord's possessions

were found inside the rental unit without her permission, I find that the evidence is not sufficient for me to make a finding that the tenants have engaged in illegal activity that has jeopardized the lawful right of the landlord or other occupants.

Although I find that the tenant LS did admit to breaching section 31(3) of the *Act* which prohibits the tenants from changing the locks to his rental unit, and although the landlord did provide evidence to support that damage may have been done to the rental unit, I find that the landlord failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

As the landlord was not unsuccessful in this application, I dismiss the landlord's application to obtain the recovery of his filing fee from the tenants.

Conclusion

I dismiss the landlord's application in its entirety. 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 22, 2018

Residential Tenancy Branch