



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 from the tenants pursuant to section 72..

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was primarily represented by their counsel. The tenant KP primarily spoke on behalf of all named tenants (the "tenant").

As both parties were in attendance service was confirmed. The tenants confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant testified that they had not served any evidence themselves. Based on the undisputed testimony of the parties I find that the tenants were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Jurisdiction

The tenants submit that this accommodation does not fall within the jurisdiction of the *Act* as it is a boarding house where the kitchen and bathroom facilities are shared with the owner of the property. The tenant submits that they have been residing in the rental building for a number of years. They say that the building has two kitchens which are both used, the tenants occupy a bedroom with its own bathroom facilities. The tenant said that there was a written tenancy agreement signed by the parties at some point

during the tenancy though none was submitted into evidence. The tenants pay a monthly rent of \$400.00.

The landlord does not reside in the rental building. The parties gave evidence that the landlord has been barred from attending at the rental building since May, 2018. Prior to the non-contact order being issued against the landlord, the landlord did reside at the building. The parties said that the landlord's daughter currently resides in the rental building.

Section 4(c) of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Based on the testimonies I find that the landlord, the purported owner of the property, does not reside at the rental address and thus facilities are not shared. While the parties gave some evidence that there was some sharing of facilities when the landlord resided in the rental building I find that the tenant had their own bathroom facilities as well as a primary kitchen on their level. Any instance of the other kitchen in the building being used was a specific occasion necessitated by what was being prepared and I find that it was not a feature of the tenancy. As such find that the tenancy does not meet the definition of a living accommodation where bathroom or kitchen facilities are shared with the owner and this tenancy falls under the jurisdiction of the Act.

Issue(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 tenants?

Background and Evidence

The landlord testified that they believe the tenants are engaging in illegal activities that threaten the rental building and endanger the other occupants. The landlord gave evidence of email notifications he received from an alarm company about access to areas of the building. The landlord provided conjecture and suppositions about the tenants' activities in the rental building and how he believed them to be a danger to the property.

The landlord's witness said that she attended at the rental building on some occasions. The witness said that she was a drug user and recognized some of the individuals who were invited onto the property by the tenants as involved in the illegal drug business.

The tenant disputed the landlord's evidence in its entirety.

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.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

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.

I find that there is insufficient evidence in support of the landlord's application for an early end to this tenancy. The landlord's submission is that there have been some alarms triggered in the rental property and screenshots of the notification were submitted into evidence. The landlord believes that the cause is the tenants but said that they had no evidence in support. The landlord repeated multiple times in their testimony that they are barred from attending at the rental unit and have no first-hand knowledge of the tenants' activities. I find that the testimony of the landlord and their witness consists primarily of conjecture, supposition and theories.

I find that there is little evidence that the tenants have engaged in any activity that would give rise to an early end to this tenancy. The landlord has failed to provide sufficient evidence to show that the tenants have done any of the things listed as a possible reason for a tenancy to end and they have failed to show that if the tenants have engaged in activities that it would be unjust for the landlord to wait until a proper Notice to End Tenancy could be enforced.

For these reason, I dismiss the landlord's application.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: July 16, 2018

Residential Tenancy Branch