



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

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.

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. During the course of this 38 minute teleconference hearing, I was able to hear evidence from the parties and the parties were both given a full opportunity to question the written evidence and the sworn testimony of the other party. Shortly after the landlord gave a final statement and when I asked the tenant if she had anything final to say about this matter, the tenant failed to respond. As it appeared that there might be some type of connection problem, I continued attempting to obtain information from the tenant for at least 15 minutes at the end of this hearing to ensure that the tenant had said everything they wanted to say at this hearing. During this period, I took no additional evidence of any kind from the landlord, who also waited on the line for the tenant to confirm whether they had anything further to add to their previous statements. I also asked the tenant to call back into the hearing to see if another line might properly connect her such that any additional statements she had to make were audible to those remaining in the teleconference hearing. As it was apparent that the tenant had nothing further to add to their previous statements and as I confirmed that they did not remove themselves from the teleconference, I ended the hearing, advising that I would base my decision on the written evidence and the sworn testimony I had heard from both parties.

As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package and written evidence package sent by the landlord by registered mail on July 18, 2018, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. The tenant did not provide any written evidence for this hearing.

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?

Preliminary Matter- Tenant's Request for an Adjournment

Near the beginning of this hearing, the tenant requested an adjournment of the landlord's application, which would enable her to obtain information on police reports referred to in the landlord's application. The tenant said that she had only received notification of the landlord's application recently and had not had an adequate opportunity to prepare written evidence and statements from those who would be able to support her position regarding the landlord's application.

Since the tenant did not submit a written request for an adjournment prior to the commencement of this hearing, Rule 6.3 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure applies:

6.3 Adjournment after the dispute resolution proceeding commences

At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

(a) the oral or written submissions of the parties;

(b) the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objective set in Rule 1 (objective and purpose);

c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

(d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and

(e) the possible prejudice to each party...

At the hearing, I asked the landlord for their position regarding the tenant's request for an adjournment of this matter. The landlord maintained that an adjournment would lead to possible prejudice to the landlord, the landlord's staff and to other tenants in this rental building as one of the primary reasons for the landlord's request for an early end to this tenancy was due to safety concerns raised about the tenant's behaviours and those of her guests and visitors.

Given that an application for an early end to tenancy is time sensitive in that the landlord is maintaining that they cannot wait for a standard 1 Month Notice to End Tenancy for Cause (a 1 Month Notice) to take effect, I find that an adjournment would potentially prejudice the landlord who submitted this application. I also find that the nature of the information the tenant described was more of the nature of testimonials from others regarding her tenancy. There was also little guarantee that the information the tenant had requested by way of an application to the local police pursuant to the *Freedom of Information and Protection of Privacy Act* would reveal any detailed information that would be of any real benefit to the matters currently before me, especially given that the landlord's only written evidence in this regard was limited to the provision of Police Report File Numbers, which are of little use as evidence without substantive information concerning the contents of these police reports. Under these circumstances and after considering the criteria established in Rule of Procedure 6.4, I denied the tenant's request for an adjournment of the landlord's application.

Background and Evidence

This tenancy for a rental unit in a rental building began on or about May 15, 2009. The tenant's subsidized portion of the current monthly rent is set at \$320.00 plus \$25.00 for heat, totalling \$345.00. There was a \$669.00 security deposit paid to the landlord on

May 11, 2009, still held by the landlord. The parties agreed that rent paid by the tenant was accepted by the landlord for use and occupancy only for July 2018. Although payments have been issued to the landlord for August 2018, the landlord said that this has not yet been cashed, and was being held until the outcome of this hearing and the August 2, 2018 hearing were known.

The tenant gave undisputed sworn testimony that during the course of her six year tenancy, the landlord has attempted to evict her more than twenty times. The landlord confirmed that there have been many notices to end tenancy issued to the tenant, most of which seem to have related to delayed payment of rent. More recently, the tenant applied for and obtained judicial review of a decision and Order of Possession granted by the RTB on the basis of a 2 Month Notice to End Tenancy issued by the landlord. This matter was recently reheard by an arbitrator appointed pursuant to the *Act* on August 2, 2018. At the time of the writing of the current decision, no decision has been issued with respect to that review hearing of August 2, 2018.

The landlord confirmed that no 1 Month Notice has been issued to the tenant for the actions and behaviours cited in the landlord's application for an early end to this tenancy. The landlord requested an early end to this tenancy because of an escalating series of threatening and allegedly illegal behaviours that the landlord maintained are resulting from this tenancy. The landlord supplied many anonymized letters from tenants in this rental building, maintaining that these tenants were too afraid to allow their names to be shared with the tenant or to appear at the hearing. The landlord also supplied a copy of an email from the landlord's maintenance worker who claimed to have been threatened and harassed by some of those who were visiting the tenant when he was attempting to perform his duties. The landlord also referenced repeated conversations with the local police who are attending this rental building because of concerns about the tenant and her visitors on a frequent and ongoing basis. The landlord provided little in writing from the police officials cited in the landlord's written evidence and sworn testimony, other than police report numbers. The landlord said that there were constant phone calls and emails complaining about the ongoing series of visitors attending the tenant's rental unit. In addition to the safety concerns and the landlord's suspicions that the tenant is using the rental unit for illegal drug related activity, the landlord maintained that there has been significant damage to the rental unit, which has gone unrepaired. The landlord supplied notes from a recent inspection of the rental unit as well as photos of damage to walls, which the landlord maintained has been escalating since the previous inspection of the rental unit.

The tenant admitted that she has visitors and guests in her rental unit, many of whom have been staying at the nearby homeless shelter, where she volunteers her time. The

tenant said that she is a hairdresser and cuts hair for some of these visitors. The tenant said that her 21-year old son has had bouts of uncontrolled behaviours in the past which have led to his punching in five holes in the walls of the rental unit. She said that these episodes happened some time ago, and that there has been no escalation of behaviours recently. The tenant said that she has not received any written request from the landlord to repair any of the holes in the walls of the rental unit. The tenant said her son is living with her again after a period when he was not in the rental unit. The tenant denied that those she was responsible for allowing on the property have threatened tenants or the landlord's staff. Although there was some mess outside her rental unit, she claimed that this mess has been removed; she disputed the facts as outlined in the email from the landlord's maintenance worker.

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, although a final decision regarding the landlord's earlier 2 Month Notice remains outstanding.

While the landlord's photographic evidence alone might very well satisfy the first portion of section 56, as outlined above, in order to issue an Order of Possession based on an early end to a tenancy, the landlord also has to demonstrate on a balance of probabilities that it would be unreasonable or unfair to have to wait for a notice to end tenancy for cause (i.e., a 1 Month Notice to take effect).

It appears that many of the tenant's actions and behaviours have been ongoing throughout much of this tenancy. While I can appreciate that these ongoing disputes that have led to the issuance of many notices to end this tenancy are no doubt troubling to the landlord and other tenants in this building, this does not support the landlord's assertion that it would be unreasonable or unfair to the landlord or tenants in this building to allow the tenancy to continue until a 1 Month Notice could take effect. It appears that the behaviours and actions for which the landlord is seeking an early end to this tenancy are behaviours that have been an ongoing feature of this tenancy. The *Act* allows landlords to seek an end to a tenancy for cause for these types of ongoing actions and behaviours. Section 56 of the *Act* is reserved for situations where a tenant's actions have escalated to the extent that the delay involved in issuing a 1 Month Notice for Cause and waiting for that Notice to take effect would be unreasonable or unfair.

In this case, I find that the landlord has relied almost solely on anonymized evidence from tenants who were neither willing to participate in this hearing or to have their names released to the tenant, which enable the tenant to respond to the case against her. The landlord's sworn testimony and written evidence regarding the police involvement in this tenancy is again indirect as there is no signed statement or email to corroborate the landlord's claim that this is a dangerous situation that cannot wait for a 1 Month Notice to be issued and to take effect. Even the sole piece of direct evidence provided by the landlord's maintenance worker was disputed by the tenant who maintained that she was present during that incident and had a different account of what happened that day. Without the author of that email available for questioning, I cannot rely on this evidence as grounds to demonstrate that it would be unreasonable or unfair to let this tenancy continue. While I can understand that some tenants might be reticent to provide sworn testimony or have their signed statements released to the tenant, the landlord's evidence relies on accounts that afford the tenant little opportunity to question those issuing such statements. I find that more evidence would need to be produced by the landlord in order to obtain an early end to a tenancy for such reasons.

I have also given careful consideration to the evidence regarding the damage to the rental unit. While the landlord's recent inspection revealed a number of holes in the tenant's walls, the tenant gave undisputed sworn testimony that these holes were created much earlier in her tenancy and not discovered by the landlord until recently. Under these circumstances, I find insufficient evidence has been presented by the landlord that would demonstrate that there has been an escalation of damage to the rental unit that would render it unreasonable or unfair to the other occupants of the rental property or the landlord 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.

My decision does not affect the ongoing application heard on August 2, 2018 to consider the 2 Month Notice issued by the landlord.

Conclusion

I dismiss the landlord's application for an early end to tenancy and recovery of the 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: August 07, 2018

Residential Tenancy Branch