



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* ("Act") for:

- an early end to this tenancy and an Order of Possession, pursuant to section 56;
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's written evidence package.

Issues to be Decided

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

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

Background and Evidence

Both parties agreed to the following facts. This tenancy began on March 15, 2018 for a fixed term ending on March 31, 2019, after which the tenant is required to vacate the rental unit. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant and the landlord continues

to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

Both parties agreed that there is a future hearing scheduled for this tenancy on October 22, 2018, the file number of which appears on the front page of this decision. The tenant confirmed that the hearing is scheduled for his application contesting a 1 Month Notice to End Tenancy for Cause, dated September 23, 2018 ("1 Month Notice") that he received from the landlord. The landlord confirmed that she issued the 1 Month Notice to the tenant. Both parties agreed that the effective move-out date on the 1 Month Notice is September 23, 2018 and the notice was issued for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
 - *put the landlord's property at significant risk.*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
 - *jeopardize a lawful right or interest of another occupant or the landlord.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord testified that she wanted to end this tenancy early and obtain an order of possession for a number of different reasons. She said that there was more than one person living at the rental unit, as she noticed adult women's clothing there. She stated that there were multiple people staying in the rental unit while the tenant was away on a fishing trip. She explained that this was a breach of the tenant's tenancy agreement. She claimed that the tenant's girlfriend wanted to video tape her at the rental unit. The landlord stated that she noticed a cigarette smell and a marijuana smell on the couch and in the bedroom of the rental unit and that marijuana was illegal. She explained that the tenant has a minor child living with him in the rental unit so this is not appropriate behaviour for the tenant. She maintained that the smoke detector inside the rental unit was tampered with, so she is concerned about the tenant smoking in the unit.

The landlord claimed that the occupant living above the tenant's rental unit has called her in tears and stated that she wants to move out because of the tenant. The landlord explained that the tenant has verbally abused her, threatened to post videos that he took of her online, and called her names. She said that she looked up the tenant online

and found assault charges against him. She testified that she has called the police who have agreed to walk through the rental unit but they told her that it was hard for them to coordinate it with the tenant and the landlord both being present. She said that the tenant has threatened to change the locks to the rental unit.

The tenant disputes the landlord's claims. He testified that the occupant living above him only sleeps 3 hours a night and is up most of the night and home all day. He stated that this occupant is noisy because she brings different men to her rental unit. He said that he filed a complaint against this occupant with strata and that is when the landlord became upset with him because she is friends with the occupant. He maintained that the occupant is also a member of the strata council and hates renters, since she owns her own unit and has been living there for 20 years. He explained that the landlord has gone through his daughter's belongings at the rental unit and he is being harassed by the landlord. He agreed that he told the landlord that she was unhappy but he only told the truth, he did not make any threats against her. He claimed that he is a good tenant, has not caused any problems and pays his rent on time.

Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:*
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
 - (iii) put the landlord's property at significant risk;*

*(iv) engaged in illegal activity that
(C) has jeopardized or is likely to jeopardize a lawful right or
interest of another occupant or the landlord;*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for her 1 Month Notice to be determined at the parties' future hearing on October 22, 2018, just 10 days from this hearing date on October 12, 2018.

The landlord failed to show the urgency of this situation and that she could not wait for the future hearing to take place regarding the 1 Month Notice. She cited a number of complaints that have been ongoing for some time. She did not produce any third party, independent witnesses to testify at this hearing. She did not produce any police reports or police officers to testify at this hearing, despite the fact that she said she contacted the police regarding the tenant.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

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

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: October 15, 2018

Residential Tenancy Branch