



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an early termination of tenancy and an order of possession. The Landlord also requests an order for payment of the filing fee.

The Landlord and female Tenant, KF, appeared for the scheduled hearing. The parties indicated that the male tenant also named in this Application is the son of the Landlord and that he has not resided in the rental unit for approximately two months. The Tenant indicates that assault charges are pending against him and that the parties cannot have contact with one another or reside in the rental unit together.

Neither party raised a concern about the service of the Notice of Hearing; however, the Tenant indicated that the Landlord’s evidence, which consisted of about 30 photographs, had not been served on her; the Landlord replied that she did not serve the Tenant because the Tenant would not have disputed the photographs showing the condition of the rental unit. Given that the Tenant was not served with the photographic evidence that was submitted, I am not prepared to consider this evidence in my decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence (with the exception of the photographs) was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Landlord entitled to an early termination of the tenancy pursuant to section 56 of the Residential Tenancy Act ("Act")?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

There was a dispute about the nature of the tenancy and no written tenancy agreement was submitted into evidence. The Landlord claims that the tenancy with her son (who is not an owner of the property) began in 2015 and that the "going rate" for monthly rent is \$2,200.00 a month. The Tenant states that she agreed to pay \$400.00 a month (on the 15th of each month) to the Landlord's son when they began living together around July of 2016, and that the Landlord's son is an owner of the rental unit through a company name.

The Landlord claims that there were issues with the Tenants using drugs, arguments, damage to the rental unit and many police calls; she indicated that she has had condominium penalties levied against her as a result of these ongoing instances over the years. She wants immediate possession of the property in order to make repairs and set it up for renting to a new tenant. The Landlord indicated that she has served other notices to vacate and also submitted a 10-Day Notice to Vacate dated August 2, 2018 into evidence. The Landlord testified that the issues and fights between her son and the Tenant have nothing to do with her and that she wants the Tenant removed so that she can get the place in order.

The Tenant states that there were arguments, some minor damage and disturbances when the Landlord's son was in the residence with her. She indicated that there were instances of physical and financial abuse, and that there were times where she was in situations where she had to scream out for help to get someone to call police. She indicated that these instances have been less frequent since the Landlord's son vacated the premises, although the police have been called when he breached his conditions and attended at the rental unit to try to contact the Tenant. She indicated that she has no tenancy agreement with this Landlord and that she has never agreed to pay \$2,200.00 a month in rent to anyone. The Tenant states that she lacks the financial means to pay such rent as she has no where else to go.

Analysis

A landlord may request an early end to the tenancy under section 56 in extreme circumstances, where it can be shown that to wait for the usual notice period would be unreasonable. It is a remedy that is only allowed in rare circumstances, as the Act already provides a landlord with opportunity to end a tenancy with one or two months written notice for other reasons. The Landlord bears the burden of proving that an Order of Possession under section 56 is warranted:

56 (1) *A landlord may make an application for dispute resolution to request an order*

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and*
- (b) granting the landlord an order of possession in respect of the rental unit.*

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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*

(A) has caused or is likely to cause damage to the landlord's property,

(B) 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, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

*(v) **caused extraordinary damage** to the residential property, and*

*(b) **it would be unreasonable, or unfair to the landlord 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.***

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy. (bolding added)

As outlined above, there are clearly two separate components to section 56 of the *Act*, both of which need to be met in order for the Landlord to obtain an early end to a tenancy. The second component requires that the Landlords demonstrate that it would be unreasonable or unfair to wait for consideration of a standard Notice to End Tenancy for Cause.

I have considered the testimony of both parties and I do not find that the Landlord has provided sufficient evidence that would warrant an early end to the tenancy under section 56 of the *Act*. At best, the evidence shows that the Landlord's son may have been the contributing party to the disputes that arose and caused noise disturbances or property damage in the rental unit; he vacated the residence two months ago due to ongoing criminal proceedings. Although the presence of this remaining Tenant is clearly troubling to the Landlord, this does not support the Landlord's assertion that it would be dangerous for the tenancy to continue until a valid One Month Notice to End Tenancy takes effect.

There has been no evidence of any violent incident or illegal activity on the part of this Tenant nor any substantiated evidence of the property being placed at "substantial risk" by this Tenant. The behaviors described have been an ongoing feature of this tenancy, and section 47 of the *Act* allows a landlord to seek an end to a tenancy for these types of ongoing actions and behaviors. I find that the Landlord's claim for early termination of this tenancy under section 56 is not warranted and the claim for an order of possession on these grounds and filing fees will be dismissed.

The Landlord states that she has served other notices on this Tenant to end the tenancy, although the Tenant states that there was improper service and that there is no

agreement to pay \$2,200.00 a month in rent to this Landlord. Those notices under section 46 or 47 of the Act are not at issue in this hearing before me. Accordingly, I make no finding of fact with respect to the validity of any notice to end tenancy.

Conclusion

The Landlord's Application for early end to tenancy is hereby dismissed.

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: September 19, 2018

Residential Tenancy Branch