



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution to end the tenancy early and obtain an Order of Possession, and to recover the filing fee from the Tenant.

The Landlord attended the hearing and provided testimony. However, the Tenant did not appear. The Landlord stated that she sent the Notice of Hearing, and evidence by registered mail on July 23, 2018. This package was sent to the rental unit. Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed to have received this package on July 28, 2018, the fifth day after its registered mailing.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord stated that the Tenant has lived in the rental unit for 4-5 years now, and that his living conditions have gotten worse over the years. The Landlord stated that the Tenant has documented mental health issues, but is not getting the necessary help, and

he is struggling to maintain his apartment. The Landlord stated that, a couple of years ago, she noticed the Tenant was hoarding, and really messy. The Landlord has sent warning letters to the Tenant to clean up. However, he has not done so. More recently, the Landlord stated that she entered the unit on June 18, 2018, and was overwhelmed with the stench of mold, and the mess. The Landlord stated that the bathroom had visible mold. The Landlord stated that the exterminator has refused to enter the rental unit anymore because the smell is so bad. The Landlord stated they are now unable to continue to treat bugs in the building because the Tenant has made his place so messy.

The Landlord stated that she also issued a 1-month Notice to end tenancy for cause on June 18, 2018. However, she stated she has not filed for an order of possession based on that Notice yet.

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the landlord when the circumstances of a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause. Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 56 of the Act.

An application for an early end of tenancy under section 56 of the Act is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, there is sufficient cause; and, 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 to take effect.

I have carefully considered the evidence before me. Although I acknowledge that some of the issues with the Tenant's living conditions within his apartment have gotten worse, I note that this degradation in living conditions has happened over the course of years.

I do not find the evidence before me sufficiently demonstrates that this issue is immediate or severe, such that it warrants as early end to the tenancy, pursuant to section 56 of the Act. An early end to tenancy is typically reserved for situations where it is not reasonable for the Landlord to wait for a 1-Month Notice to take effect. I dismiss the Landlord's application for an order of possession, as I do not find it meets the criteria for an early end to tenancy, as laid out above.

The Landlord is at liberty to apply for an order of possession based on the 1-Month Notice to End Tenancy she has already issued. I have not made any findings on the merits of the 1-Month Notice she already issued and my findings in this hearing only related to whether or not there are sufficient grounds to end the tenancy early.

Given the Landlord was not successful in this hearing, I decline to award her the recovery of the cost of the filing fee she paid to make this application.

Conclusion

The Landlord has not met the burden to prove the tenancy should end early. Therefore, the Landlord's Application is dismissed without leave to re-apply and the tenancy will continue until such time it is ended in accordance with the Act.

The Landlord remains at liberty to apply for an order of possession based on the 1-Month Notice to end tenancy.

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 04, 2018

Residential Tenancy Branch