



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing convened as a Landlord's Application for Dispute Resolution, filed on November 30, 2018, the Landlord requested an early end to tenancy.

The hearing was conducted by teleconference at 9:30 a.m. on January 3, 2019.

Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 10:00 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that her agent, D.P. personally served the Tenant's sister with the Notice of Hearing and the Application on December 8, 2018. Based on the Landlord's undisputed testimony I find the Tenant was duly served as of December 8, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to an early end to tenancy?

Background and Evidence

The Landlord testified that this tenancy began April 1, 2018. Monthly rent is payable in the amount of \$2,400.00.

The Landlord stated that the reasons giving rise to her request are a result of the condition in which the rental unit is being kept, as well as her concerns that the Tenant has allowed transients to reside in the rental unit. In the details of dispute section of her Application the Landlord wrote as follows:

“...The tenant is allowing transient individuals to stay in the property which was not discussed with me. Today I went to the home and the door to the basement suite was open after announcing myself as the landlord I could hear water leaking inside, I looked around and found that in the bathroom the floor above had a massive leak and the home was in disarray. The tenant had not informed me of this leak and is not even residing at the residence. I will suffer incredible loss if this goes on.”

The Landlord stated that she attended the rental unit on November 30, 2018. The doors were wide open and from the outside of the house she could see water pouring from the ceiling in the bathroom. The Landlord viewed this as an emergency situation and entered the rental unit. She discovered a leak in the bathroom ceiling. At this time the Landlord took photos of the rental unit, copies of which were provided in evidence.

The Landlord testified that she has sent messages to the Tenant repeatedly asking for information about the water leak and requesting time to come and repair the leak. She further testified that the Tenant initially would not give access to the Landlord to repair the rental unit; she confirmed however, that at the time of the hearing, the repair to the leak in the bathroom ceiling has now been completed.

The Landlord further advised that the parties attended a prior Arbitration on November 30, 2018 at which time the Tenant applied to cancel a notice to end tenancy. As the Arbitrator was not satisfied the Landlord had been served with the Tenant's materials, the application was dismissed with leave to reapply. The Landlord stated that during the hearing the Tenant initially stated that she wasn't at the rental unit. When pressed by the Arbitrator for an address the Tenant told the Arbitrator to send the Decision to the rental unit.

The Landlord stated that the Tenant has not paid rent since September 2018 and when the Landlord attends the persons who appear to be living there state the Tenant is not there.

The Landlord further confirmed that she has a hearing on January 11, 2019 (8 days after the hearing before me) on her application for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. A Landlord who seeks to end a tenancy bears the burden of proving the reasons for ending the tenancy on a balance of probabilities.

In the application before me, the Landlord applies for an early end to tenancy pursuant to section 56 of the *Act* which reads as follows:

Application for order ending tenancy early

- 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

When considering such an application, an Arbitrator must be satisfied of both parts of the test set out in section 56; namely, an Arbitrator must be satisfied the Landlord has cause to end the tenancy and that it would be unreasonable or unfair to wait until the effective date of a 1 month notice to end tenancy for cause to take effect.

After consideration of the evidence and testimony before me, the requirements of section 56, and on a balance of probabilities, I find the Landlord's Application should be dismissed.

The use of the words "significant" and "serious" in section 56 coincide with the gravity of such emergency applications; a Landlord must show that there is an urgency to ending the tenancy, one that is so severe that it is not reasonable to wait a month for a notice to end tenancy for cause to take effect. I find that the Landlord has failed to meet this burden.

While the leaking ceiling is certainly concerning, the evidence before me is that the repair was made.

Further, although the Tenant may have guests in the rental unit, I am not satisfied, based on the evidence before me, that she has abandoned or vacated the rental unit.

More importantly, I am not satisfied this case meets the second part of the test in section 56, that it would be unreasonable or unfair to wait until the effective date of a 1 month notice to end tenancy for cause to take effect. I find the Landlord has failed to prove there is an urgent need to end this tenancy. Should the Landlord wish to end the tenancy for cause, she may issue a 1 month notice pursuant to section 47 of the *Act*.

The evidence before me is that the parties will attend a further arbitration on January 11, 2018 at which time the merits of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities will be addressed.

Conclusion

The Landlord's Application for an early end to tenancy pursuant to section 56 of the *Act* is dismissed. The tenancy shall continue 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: January 4, 2019

Residential Tenancy Branch