



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing commenced at 11:00 a.m. on this date, via teleconference call, to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession pursuant to section 56 of the Act. The landlord appeared at the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for 45 minutes.

Since the tenant did not appear for the hearing, I proceeded to explore service of the hearing documents upon the tenant. The landlord testified that the hearing package and the landlord's evidence were put in the tenant's mailbox on December 10, 2018 in the presence of a witness and the landlord took photographs of himself doing so.

The landlord testified that after he deposited the hearing documents in the tenant's mailbox the tenant's mother contacted the landlord to state the tenant was in the hospital at that time but that the tenant would be moving out on December 21, 2018. The tenant did not move out but sent several text messages to the landlord indicating she receiving the hearing documents and would be moving out, including one where she stated she was moving out today. The landlord submitted that he continues to seek an Order of Possession because the tenant has stated she is moving out a number of times before but does not follow through.

Where a landlord seeks an Order of Possession, the landlord must serve the tenant in a manner that complies with section 89(2) of the Act. Section 89(2) permits a landlord to serve by posting on the door or other conspicuous place, giving the documents to an adult who apparently resides with the tenant, among other ways; however, placing the documents in the mailbox is not specifically permitted.

Section 71 of the Act permits me the authority and discretion to deem a party sufficiently served even if they were not served in a manner that complies with section 89 of the Act. In this case, I was satisfied that the tenant received the hearing documents and evidence and I deemed her sufficiently served with the hearing package and evidence three days after they were placed in her mail box pursuant to sections 71 and 90 of the Act. As such, I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord be provided an Order of Possession pursuant to section 56 of the Act?

Background and Evidence

The one-year fixed term tenancy started on June 16, 2018 and the landlord collected a security deposit of \$875.00. The tenant is required to pay rent of \$1,750.00 on the first day of every month.

The landlord submitted the reasons for seeking an early end of tenancy are:

- The tenant took the bathroom vanity, fridge, stove, washer and dryer out of the rental unit and threw them into the yard. The stove is visibly damaged in the photographs provided to me.
- The landlord also observed a hole on the exterior of the house and the window blinds appear damaged.
- The tenant changed the locks to the rental unit and did not give the landlord a key; plus, the tenant is very aggressive toward the landlord so the landlord has been unable to inspect the condition of the inside of the house.
- The tenant has made several threats of physical harm toward the landlord via text message and in person which have been escalating in severity. The police have been called to the property in response to the threats.
- The police have also been called to the property numerous other times in recent months.
- The tenant almost rammed her vehicle into the landlord when he attended the property on December 3, 2018.

The provided photographs showing the fridge and stove are outside; text messages he received from the tenant; portions of the tenancy agreement; and, an RCMP card with a file number.

The landlord requested an Order of Possession that is effective immediately upon service of the Order to the tenant given the apparent damage and vandalism that the tenant has caused to the property and the threats of physical harm to the landlord.

Analysis

Section 56(2) of the Act permits an Arbitrator to order an early end to a tenancy and provide the landlord with an Order of Possession where it would be unreasonable to wait for the effective date of a 1 Month Notice to End Tenancy for Cause if one had been issued. Section 56(2) provides that a tenancy may be ended early where:

(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.

[My emphasis added]

The landlord bears the burden to prove the tenant, or persons permitted on the property by the tenant, has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. The burden is high as this provision is intended to apply in the most severe circumstances.

Base on the unopposed evidence before me, I accept that the tenant, or a person permitted on the property by the tenant, has significantly interfered with the landlord of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord. Given the apparent damage and vandalism to the property and the threat of physical harm to the landlord I find the landlord has satisfied me that it is unreasonable to wait for a 1 Month Notice to End Tenancy for Cause to take effect and I find that an order for an early end of tenancy and Order of Possession are warranted. Therefore, I grant the landlord's request for an Order of Possession under section 56 of the Act.

Provided to the landlord with this decision is an Order of Possession effective IMMEDIATELY after service of the Order upon the tenant. The tenancy shall end IMMEDIATELY after the tenant receives the Order and the tenant will be required to immediately vacate the property.

I award the landlord recovery of the \$100.00 filing fee paid for this application. The landlord is authorized to deduct \$100.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The landlord is provided an Order of Possession effective IMMEDIATELY after service of the Order upon the tenant. The tenancy shall end immediately after the tenant receives the Order of Possession, or is deemed to have received it, and must vacate the rental unit immediately thereafter.

The landlord may deduct \$100.00 from the tenant's security deposit to recover the filing fee paid for this application.

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 03, 2019

Residential Tenancy Branch