



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 landlords' Application for Dispute Resolution, seeking an order to end the tenancy early, receive an order of possession, and to recover the cost of the filing fee.

The landlords and the tenant attended the hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. Only the evidence relevant to this decision is described in this decision.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

In addition, the landlords were advised that all of their late documentary evidence served after the 14 day deadline before the date of hearing was being excluded as I find the evidence was not served in accordance with the Rules of Procedure. In addition, Rule 3.2 was described to the parties which states:

3.2 Evidence relating to an early end to a tenancy

When a landlord is seeking an early end to the tenancy, **the landlord must submit all evidence with the Application for Dispute Resolution, or, when applying using the Online Application for Dispute Resolution, the next day.** All evidence to be relied on at the hearing must be served on the respondent with the Notice of Dispute Resolution Proceeding Package described in Rule 3.1.

[Emphasis added]

I find the landlords failed to comply with Rule 3.2 described above by submitting evidence up to an including the day before the hearing.

Issues to be Decided

- Are the landlords entitled to end the tenancy early and obtain an order of possession?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlords have applied for an order of possession to end the tenancy early based on:

Tenant set up camper in dangerous-precarious manner. The blocks already collapsed once. He moved it next to the cottage where it may collapse and hit it. It's lopsided. It's uninsured so neither our insurance nor the tenant's insurance will cover damage to people, property. I fear for safety of anyone near it- especially tenant's 4-yr-old son. Tenant refuses to insure it, 22 days have passed since we gave notice to move& set it properly-he's jeopardizing safety-property-our liability&interests.

The landlords confirmed that they did not submit a photo of the camper tipped over as claimed in their evidence. The landlords also did not supply any evidence from their insurance company that was served in accordance with the Rules of Procedure. The tenant denied under oath that his camper had previous tipped over as claimed by the landlords.

The landlords also confirmed that they served the tenant with a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") with an effective vacancy date of February 28, 2019, which is 27 days away from the date of this hearing. The landlords confirmed that they have not applied for an order of possession based on the 1 Month Notice.

The landlords affirmed that the camper issue existed in early December 2018. The landlords submitted their application on January 9, 2019. The landlords referred to two photos of a camper leaning slightly to one side.

Analysis

Based on the documentary evidence and the testimony from the parties during the hearing and on a balance of probabilities, I find the following.

Section 56 of the *Act* indicates:

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.

[Emphasis added]

The burden of proof is on the landlords to prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect. The burden of proof is also higher for an early end of tenancy application than a regular application for an order of possession based on a 1 Month Notice.

In the matter before me, the effective vacancy date is only 27 days away from the date of this hearing. I find that the landlords have provided insufficient evidence in accordance with the Rules of Procedure to support their testimony and the application before me. Therefore, I find the landlords have failed to provide sufficient evidence to support that the tenancy should end early without having to wait for a 1 Month Notice effective vacancy date to take effect.

At the very least, I would expect the landlords to have submitted a copy of the tipped over trailer. I do not find the two colour photos of a camper slightly leaning to one side to be compelling enough to end the tenancy before the effective date of the 1 Month Notice, which is 27 days away from the date of this hearing. Therefore, I find that the landlords have failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the *Act*. Consequently, I dismiss the landlords' application in full due to insufficient evidence, without leave to reapply.

As the landlords did not succeed with their application, I do not grant the landlords the recovery of their filing fee under the *Act*.

The tenancy shall continue until ended in accordance with the *Act*.

Conclusion

The landlords' application fails.

The tenancy continues until ended in accordance with the *Act*.

The filing fee is not granted.

This decision will be emailed to both parties as noted above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: February 1, 2019

Residential Tenancy Branch