



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FRASERSIDE COMMUNITY SERVICES SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an early end to this tenancy and an Order of Possession pursuant to section 56;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:12 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's director attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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's director and I were the only ones who had called into this teleconference.

The landlord's director testified that the tenant was personally served the notice of dispute resolution form and evidence on March 7, 2019. I find that the tenant was served with these documents on March 7, 2019, in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- an early end to this tenancy and an Order of Possession; and
- recover the filing fee for this application from the tenant?

Background and Evidence

The parties entered into a month to month tenancy agreement starting March 10, 2017. Monthly rent is \$1,000.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$500.00. The landlord still retains this deposit.

The landlord's director testified that on January 17, 2019, she served the tenant with a 10 Day Notice to End Tenancy (the "**Notice**") by posting it to the door of the rental unit.

The landlord's director entered into evidence a copy of a monetary order worksheet which showed that the tenant is in rental arrears of \$4,200.00, as of February 1, 2019.

The landlord's director testified that neither she nor the building manager has been able to communicate with the tenant since the Notice was issued, and that they are concerned that there is internal damage to the rental unit. She stated that they have not seen any evidence of damage to the inside of the unit, as they has been unable to gain access to the rental unit.

The landlord's director testified that the basis for her belief that the rental unit is damaged is because the tenant, on more than one occasion, has held loud parties. On one occasion, she testified the party went unit 4:30 am. In her experience, loud parties correlate with damage to a rental unit.

The landlord's director testified that she suspects that the tenant has vacated the rental unit, and that the tenant's teenaged son lives there alone. She testified the held this belief based on security camera footage. However, she did not enter any security footage into evidence.

Analysis

Section 56 of the Act establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and an order of possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

Section 56 of the Act states:

Application for order ending tenancy early

56(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.

As outlined above, there are two separate components to section 56 of the Act, both of which need to be met for the landlord to obtain an early end to a tenancy. The second component (56(2)(b)) requires that the landlord demonstrate that it would be unreasonable or unfair to wait for consideration of a standard One Month Notice to End Tenancy for Cause.

In this case, the landlord issued the Notice on January 17, 2019. Based on the landlord's director's testimony, the landlord's director gave no evidence as to why the landlord did to enforce the Notice in accordance with section 46 of the Act, as opposed by the more onerous hearing process set out in section 56.

In any event, as the landlord is the applicant in this matter, it bears the burden, on a balance of probabilities, to prove that the high standard of criteria required under section 56 of the Act has been met. This means not only proving that there are grounds for ending the tenancy for cause, but also that it would be unfair or unreasonable to the landlords to wait for a One Month Notice to End Tenancy to take effect.

I find that the landlord has failed to meet this evidentiary burden. While the landlord may have suspicions that the tenant is damaging the rental unit, it has provided no evidence of such. Such evidence is within the power of the landlord to obtain (by issuing a notice of entry pursuant to section 29 of the Act, for example). Additionally, the landlord's agent provided no evidence, whether verbal or documentary, as to whether the damage to the unit would be increased or its loss exacerbated if the landlord was to proceed with an application to end tenancy pursuant to section 47 (One Month's Notice to End Tenancy for Cause).

In considering the evidence submitted, I find the landlord has not met the standard of proof required for its application. Section 56 of the Act is reserved for situations where a tenant's actions have escalated to the extent that the delay involved in issuing a One Month Notice for Cause and waiting for that Notice to take effect would be unreasonable or unfair.

In this case, I am satisfied that there *may* be cause to end this tenancy pursuant to section 47 of the Act; however, I am not satisfied that the landlord has sufficiently met the burden of proving that it would be unreasonable or unfair to wait for a One Month Notice to End Tenancy to take effect, as is required in order to end a tenancy early pursuant to section 56 of the Act.

I would note that the Notice is not, in fact, a One Month Notice to End Tenancy, but rather it is a 10 Day Notice to End Tenancy. The Residential Tenancy Branch has procedures in place to allow for the expedited processing on an application to end a tenancy based on such notices (called a "Direct Request"). While I make no findings as to whether the documents entered into evidence by the landlord would be sufficient to obtain the relief sought through the direct request process, the landlord may want to consider whether proceeding by way of a Direct Request would allow it to obtain its desired relief.

Conclusion

I dismiss the landlord's application for an early end to tenancy and recovery of the application fee without leave to reapply. This tenancy continues 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: April 01, 2019

Residential Tenancy Branch