



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING PACIFIC DEVELOPMENTS WESTERN
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

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.

The landlord's agent (the landlord) and the named tenant both attended the hearing via conference call and provided testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence. The tenant confirmed that no documentary evidence was submitted. Neither party raised any service issues. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the named tenant argued that she is not a tenant, but was in fact the owner of the rental unit. The named tenant argued that the Residential Tenancy Branch did not have jurisdiction as this was a strata dispute. The named landlord disputed this claim stating that the named tenant is his daughter and that a signed tenancy agreement had been made. The named tenant confirmed that no documentary evidence was submitted. In this case, the tenant has claimed that no jurisdiction applies as the named tenant is in fact the owner and not a tenant which was disputed by the named landlord. However, neither party provided sufficient evidence in support/dispute of this claim. In the absence of any supporting evidence, I find that I do have jurisdiction and the hearing shall proceed.

Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

In this case, the landlord seeks an early end to the tenancy and to obtain an order of possession. The landlord claims that there have been numerous incidents where the police have been called due to excessive noise and people in the rental unit. The landlord claims that the strata council has served notice to the landlord that they will go to court seeking the landlord to evict the tenants due to other occupants in the rental building suffering from constant issues caused by the tenant.

The landlord was asked what the immediate and severe risk did the tenant pose? The landlord repeatedly stated that the tenant is causing other occupants of the property to suffer a loss of quiet enjoyment (not being able to sleep). The landlord claims that this poses an immediate and server risk to the landlord and other occupants.

The tenant has disputed the landlord's claims, but confirmed that there have been no issues or complaints served to her since October 2018. The tenant claims that there were some mental health issues that caused excessive noise and that it has been dealt with.

The landlord has submitted 3 documents:

letter dated December 19, 2018 which refers to incidents mentioned in another letter dated October 4, 2018, re: noise complaints November 17, 21, 23, December 6 and 17 of 2018.

Letter dated March 25, 2019, re: a fine being imposed by the strata against the landlord.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property;
 - 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
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be "unreasonable or unfair" to wait for a cause notice to take effect.

In this case, the landlord has provided undisputed evidence that the tenant has caused a loss of quiet enjoyment to other occupants of the property and that the landlord is subject to a strata fine. The landlord has indicated that no 1 month notice was issued because the early end to tenancy pursuant to section 56 was more expedient as he does not wish to wait for a scheduled hearing after the notice period of an issued 1 month notice. As such, I find that the issue presented before me does not meet the standards under section 56 of the Act. The landlord has failed to provide sufficient cause to proceed as why it would be "unreasonable or unfair" to wait for a notice for cause to take effect as required. I find that the landlord seeks to circumvent the Act for a more convenient process.

Conclusion

The landlord's application is dismissed.

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: June 21, 2019

Residential Tenancy Branch