



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUSAN BASHIRI INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on June 12, 2019, wherein the Landlord sought an early end to tenancy and recovery of the filing fee.

The hearing was scheduled for teleconference at 11:00 a.m. on August 12, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective 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.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

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

2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began June 4, 2018. Monthly rent was payable in the amount of \$2,100.00.

The Landlord stated that the reason for ending the tenancy is due to the “Bylaw Violation” which indicates the Tenant has not cleaned up dog feces and smokes in the rental unit. The Landlord also stated that the Tenant is operating an AirBnB, and as a result the City in which the rental unit is located is now fining the Landlord \$100.00 per day.

In terms of the immediate risk, the Landlord stated that she was informed by the Strata manager that the neighbours were concerned about their health due to the dog feces on the balcony.

The Landlord also filed in evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as well as a 1 Month Notice to End Tenancy for Cause. The reasons set out in the 1 Month Notice indicate that the Tenant did not pay a pet damage deposit.

In response to the Landlord’s claims the Tenant stated as follows. She stated that there is no dog feces on the balcony, rather there are rocks. She further stated that she emailed the building manager to explain that it was rocks she had collected, not dog feces, and the building manager did not respond. She suggested that the fact they did not respond indicates this does not bother the Landlord anymore.

In terms of the smoking allegations, the Tenant stated that she has never smoked in her entire life. She also denied that her friends smoke at the rental property.

In terms of the allegation that the Tenant is operating an AirBnB, the Tenant stated that it was not true. The Tenant further stated that although she knows that the Landlord received a letter from the City in which the rental unit is located, the letter did not indicate any time period such that the Tenant believes it could have been during a time when she did not live there.

In reply, the Landlord stated that four days after the Tenant moved in she was informed by the strata manager that two gentlemen entered the building looking for their AirBnB

on the 27th floor (which is the floor in which the rental unit is located). The strata manager further informed the Landlord that they went from door to door until they opened the subject rental unit.

The Landlord claimed that she spoke to the Tenant in 2018 and the Tenant apologized and said she would not rent it out on a short term basis anymore. The Landlord stated that she did not file until June 12, 2019 because she believed the Tenant that she would not continue to operate the AirBnB.

In terms of why this matter was now urgent, she stated that the AirBnB continued “plus other stuff”. The Landlord confirmed that her biggest concern is the potential fine that she faces for the Tenant operating a short term rental. In support the Landlord provided a copy of a letter from the City dated May 15, 2019.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. The Landlord in this case seeks an early end to this tenancy pursuant to section 56 of the *Act*.

Under section 56 of the *Act*, the tenancy may only be ended early if the Landlord provides sufficient evidence that the Tenant had

1. *significantly interfered* with the Landlord or another occupant of the residential property;
2. *seriously jeopardized* the health or safety or lawful right or interest of the Landlord or another occupant;
3. put the Landlord's property at *significant* risk;
4. engaged in illegal activity that
 - a. has damaged or is likely to damage the Landlord's property,
 - b. has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
 - c. has jeopardized a lawful right of another occupant or the Landlord; or
5. caused *extraordinary* damage to the residential property

and it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect (emphasis added).

Orders of possession granted pursuant to section 56 are reserved for rare circumstances where there is an emergency situation and where there is immediate risk to persons or property. Unpaid rent and potential fines do not create such emergency situations. Branch records confirm that the Landlord was informed of this as early as June 19, 2019.

In this case, the Landlord stated that her most immediate concern was that the Tenant was operating a short term rental contrary to the City bylaws. She further testified that this has occurred throughout the tenancy as she claimed the Tenant was doing so within four days of the tenancy beginning back in 2018. She also stated that she would be fined daily should this continue.

The Tenant denied operating a short term rental out of the rental unit.

When asked to address the urgency of the situation the Landlord stated that she was concerned about the fines, as well as the health risk to others in the building posed by the Tenant's dog defecating on the balcony. She did not elaborate on how this created the alleged health risk.

The Tenant testified that she does not allow her pet to defecate on the balcony, and that the strata manager observed rocks she had collected, not dog feces on the balcony. The Tenant also denied smoking and stated that none of her friends smoke.

The Landlord is clearly concerned about this tenancy continuing. She has issued both a 10 Day Notice pursuant to section 46 and a 1 Month Notice pursuant to section 47. The evidence of the parties was that the Tenant paid the rent upon receipt of the 10 Day Notice, and has not disputed the 1 Month Notice.

It is likely the tenancy will end pursuant to the undisputed 1 Month Notice as the time limit to dispute the notice, as well as the effective date of the notice are well past. However, I find that the issues raised by the Landlord do not warrant ending a tenancy pursuant to section 56. While the Landlord is clearly concerned about the potential fines resulting from the Tenant allegedly operating a short term rental, such financial concerns do not meet the requirements of section 56 as they do not put the property at *significant* risk.

Similarly, even in the event I had found the Tenant was allowing her dog to defecate on the balcony, or smoke on the property, I find the Landlord has provided insufficient

evidence to support a finding that the Tenant has *seriously jeopardized* the health or safety or lawful right or interest of the Landlord or another occupant.

Finally, it is notable that the effective date of the 1 Month Notice has past. As such, the circumstances do not meet the second part of the test in section 56, namely that “it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect”. Should the Landlord wish to end the tenancy based on the 1 Month Notice, she is at liberty to reapply for an Order of Possession based on the undisputed notice.

For these reasons, I dismiss the Landlord’s request for an early end to this tenancy. Having been unsuccessful, her request to recover the filing fee is similarly dismissed.

Conclusion

The Landlord’s Application for an Order of Possession pursuant to section 56 of the *Act* and recovery of the filing fee 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: August 14, 2019

Residential Tenancy Branch