



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- 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 9:43 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

Landlord YTL (the landlord) gave undisputed sworn testimony that they sent the tenant a copy of their dispute resolution hearing package and written evidence by registered mail on August 8, 2019. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. On this basis and in accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with this information on August 13, 2019, the fifth day after its registered mailing.

At the hearing, the landlord testified that they posted a notice of a proposed inspection of the rental unit on the tenant's door in early August 2019. When they entered the rental unit at the appointed time, the tenant was not there and it appeared that the

tenant may have abandoned the rental unit, although they have left furnishings and possessions in the rental unit. The landlord said that they have not noticed any evidence that the tenant has been to the rental unit since August 7, 2019.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord said that this tenancy began in January 2019. Monthly rent is set at \$1,600.00, payable in advance on the first of each month. The landlord said that rent remains owing and that a hearing has been scheduled for early September 2019 to consider the landlords' application for a monetary award for unpaid rent.

The landlords entered into written evidence copies of a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) issued on June 6, 2019 for the tenant's repeated late payment of rent. The effective date of that Notice was June 30, 2019, The landlords also entered into written evidence a copy of a June 30, 2019 Mutual Agreement to End Tenancy, which was to have taken effect as of July 6, 2019.

When the tenant did not vacate the rental unit by either of the above dates, the landlords applied for an early end to this tenancy for a range of reasons outlined in their application. They maintained that the tenant had seized some of the landlords' mail, had restricted the landlords' access to certain parts of the rental suite, had thrown an object at one of the landlords, and had allowed a guest or guests who were illegally at large to access the landlords' property, necessitating visits by the police to the landlords' rental property to return the guest or guests to a correctional facility. The landlords alleged that the tenant's activities posed a security risk to the landlords that could not wait for a hearing of their application for an Order of Possession based on the 1 Month Notice.

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 the issuance of 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. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

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

it would be unreasonable, or unfair to the landlord, the tenant 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.

In this case, the landlords have issued a 1 Month Notice for Cause pursuant to section 47 of the *Act*, and have also obtained a signed Mutual Agreement to End Tenancy from the tenant.

Based on the undisputed written evidence and sworn testimony of the landlord, I find that sufficient evidence has been provided to warrant an end to this tenancy for the reasons outlined in the first portion of section 56. I am satisfied that sufficient undisputed evidence has been provided to demonstrate that the tenant has seriously jeopardized the health or safety or a lawful right or interests of the landlords.

The second test to be met in order for a landlord to obtain an early end to tenancy pursuant to section 56 of the *Act* requires that a landlord demonstrate that "it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 of the *Act* for cause to take effect.

On this point, I find that there is evidence that the tenant has already abandoned the rental unit, although they have left their furnishings and some of their possessions behind. At the hearing, I advised the landlords that it appeared that they may not need an Order of Possession because the tenant has not returned to the rental unit since sometime in early August. While the landlords may very well have grounds to take possession of the rental unit, change the locks, and store the tenant's furnishings and possessions of value for at least 30 days without an Order of Possession on the basis of the tenant's apparent abandonment of the premises, I issue an immediate Order of Possession that would also enable the landlords to take possession of this rental unit. I do so as I find it would be unfair for the landlords to experience any further delay in ending this tenancy or wait for a hearing of their application for an Order of Possession for cause.

Since the landlords did not know when they applied for an early end to this tenancy on July 3, that the tenant would be abandoning the rental unit by early August, I allow the landlord to recover their \$100.00 filing fee for this application.

Conclusion

I grant the landlords an immediate Order of Possession, to be used in the event that the landlords have not already taken possession of the rental unit on the basis of the tenant's abandonment of the rental unit.

I issue a monetary award in the landlords' favour in the amount of \$100.00 to recover their filing fee from the tenant. The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 30, 2019

Residential Tenancy Branch