



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMPBELL RIVER HEAD INJURY SUPPORT
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 pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession pursuant to section 56?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord testified that the tenancy started on November 24, 2016. The landlord holds a \$300.00 security deposit.

The landlord testified that a guest of the tenant has been engaged in illegal activities at the building in August 2019. Specifically, the landlord testified that tenant's guest has been soliciting prostitution services from occupants. The landlord testified that this was especially disturbing because the occupant is very vulnerable as a result of his medical condition.

The tenant testified that he was not aware that his guest was alleged to have been involved in illegal activity until after he asked her to leave. The tenant testified that the first time he became aware of the allegations against her was when this application for an early end of tenancy was served upon him.

The landlord also testified that the tenant has engaged in the consumption and trafficking of illegal narcotics from the rental unit. The landlord produced multiple narcotic-related dating back to February 2019. These complaints culminated in a letter dated July 4, 2019 wherein the tenant was accused of narcotic trafficking in the rental unit. The tenant denied using or trafficking any illegal narcotics in the rental unit.

The landlord seeks an early end of this tenancy.

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.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that BOTH:

- (1) 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; or

- caused extraordinary damage to the residential property.

AND

- (2) 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.

Residential Tenancy Policy Guideline No. 51 discusses applications to end tenancy early:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month). Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clear.

Residential Tenancy Policy Guideline No. 32 discusses the rules for ending tenancies based upon illegal activities:

If a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity. The tenant may be found responsible for the illegal activity whether or not the tenant was actually present when the activity occurred, so long as it was in the rental unit or on the residential property. For example, the tenant may know that his or her guest has been arrested for breaking and entering. The guest breaks into the rental unit of another tenant. This

may constitute grounds for ending the tenancy for illegal activity. A further example may be where a tenant allows a teenage child of the tenant to have a party in the rental unit or on the residential property while the tenant is away and one of the party guests commits an illegal act in circumstances where supervision would be found to be warranted and where the tenant knew or ought to have known that such an illegal act could occur in the circumstances (underage drinking, use of drugs, presence of a weapon).

The test of knowledge attributable to the tenant is the "reasonable person" test. If a reasonable person would be expected to know or ought to know that illegal activity might occur, the tenant will be responsible whether or not the tenant actually possessed this knowledge. In other words, willful or inadvertent blindness to the possibility will not save the tenant from the consequences of the guest's illegal activity. (**emphasis added**)

Based on the testimony of both parties and my review of the written evidence, I find that the landlord has failed to prove the tenant knew or ought to have known that the tenant's guest was committing illegal activities at the rental unit. The tenant provided uncontested testimony that he did was not aware that his guest was engaged in illegal activities and that he had already asked her to leave but the time the allegations against her were first raised in the landlord's application for an early end of tenancy.

Furthermore, the landlord has not presented any evidence to establish that the tenant knew or ought to have known that the tenant's guest was committing illegal activities at the rental unit. The landlord did not present any evidence to show that the tenant was advised of the illegal activity or that the tenant should have known of the illegal activity. In addition, the landlord did not provide any evidence that the tenant witnessed any of his guest's alleged illegal activity.

As such, I find that the landlord has failed to establish the tenant knew or ought to have known that the tenant's guest was committing illegal activities at the rental unit. Accordingly, I do not find that the landlord is entitled to an early end of tenancy based upon the alleged illegal activity of his guest.

The landlord also requested an early end of tenancy based upon an allegation that the tenant possessed and trafficked in illegal narcotics from the rental unit. However, as the landlord has had complaints of this activity dating back to February 2019, I do not find that this is an urgent matter requiring an early end of tenancy. Section 56(2) states that an early end of tenancy can only be granted if "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." Given the landlord's delay in seeking an end of this tenancy based upon narcotics, I find that it would be unreasonable for the landlord to wait for a notice to end tenancy under section 47.

For the forgoing reasons, the landlord's application for an early end of tenancy is dismissed. This tenancy shall continue until it ends pursuant to the *Act*.

Since the landlord was not successful in this matter, I dismiss the landlord's application for reimbursement of the filing fee pursuant to section 72.

Conclusion

I dismiss the landlord's application for an early end of tenancy. This tenancy shall continue until it ends pursuant to the *Act*.

I dismiss the landlord's application for reimbursement of the filing fee pursuant to section 72.

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: September 05, 2019

Residential Tenancy Branch