



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On August 2, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an early end of tenancy and an order of possession for the rental unit.

The matter was set for a conference call hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord testified that she did not serve a copy of her documentary evidence to the Tenant prior to the hearing. The Tenant confirmed that she has not received any documentary evidence and is not aware of the evidence that was provided and did have any opportunity to consider or respond to the evidence.

Since the Landlord has not served the Tenant with a copy of the evidence as required by the rules of procedure, it would be unfair to consider the Landlord’s documentary evidence. The Landlord’s documentary evidence is excluded and will not be considered.

Background

The Landlord and Tenant testified that the tenancy began on July 1, 2019, on a month to month basis. The parties testified that rent in the amount of \$1,200.00 is due by the 30th day of each month. The parties testified that the Tenant was required to pay the Landlord a security deposit of \$600.00. The Tenant provided a copy of the tenancy agreement.

The Tenant rents a room in a rental property and she shares the rental property with other Tenants who are under separate tenancy agreements.

The Landlord applied for dispute resolution seeking an early end to the tenancy and an order of possession for the rental unit.

The Landlord testified that the Tenant informed the Landlord that the monthly rent would be paid by the Tenant's lawyer who is located in Ontario. The Landlord testified that she received a cheque for the amount of \$3,600.00; from the person identified as the Tenant's lawyer; however, the cheque was not legitimate as it was issued on a non-existent account. The Landlord testified that there is no lawyer.

The Landlord testified that the Tenant asked her to be her caregiver on an agreement that the Tenant would pay the Landlord \$1,000.00 each month. The Landlord testified that she has been paying all the Tenant's expenses when they go out and also paid the entire costs for a cruise. The Landlord testified that she has spent over \$15,000.00 on the Tenant.

The Landlord testified that the Tenant is causing trouble for other occupants at the rental property. She testified that the Tenant stole another occupant's food.

The Landlord testified that she searched online and found that the Tenant is wanted for fraud. The Landlord testified that she reported the Tenant to the police and the police arrested her. The police released the Tenant and the Tenant remains living in the rental unit.

The Landlord testified that she issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Notice states that a Tenant has the right to dispute the Notice within 5 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

In reply, the Tenant testified that receive a 10 Day Notice from the Landlord and she disputed the 10 Day Notice.

The Residential Tenancy Branch case management system indicates that the Tenant disputed the 10 Day Notice and there is a hearing scheduled for September 30, 2019, to determine whether or not the tenancy is ending due to non-payment of rent.

The Tenant provided testimony acknowledging that she has a criminal record; however she testified that she has not been in any trouble recently. The Tenant testified that her lawyer asked the Landlord to be her care-giver and she agreed.

The Tenant testified that the Landlord is blaming her for everything that occurs at the rental unit.

The Tenant testified that she is aware that the rent did not get paid and that there is an upcoming hearing.

The Tenant testified that she gets along with the other occupants living in the rental property and she does not know why the Landlord is saying that she is a nuisance.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, the Tenant or a person permitted on the residential property by 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 interest 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,
- 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, **and,**

- **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 to take effect.** [my emphasis]

Analysis

Based on the testimony and documentary evidence before me I make the following findings:

An application for an early end of tenancy is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

I find that the care giver agreement that the Landlord and Tenant entered into is a separate agreement from the tenancy agreement. It appears that the Landlord chose to provide assistance to the Tenant and chose to pay for her expenses, including the cost of a cruise with the expectation of being reimbursed.

Aside from the issue regarding payment of rent, the Landlord suggests that the Tenant is a nuisance. I find that there is insufficient evidence from the Landlord that the Tenant presents an immediate and severe risk to the rental property, other occupants, or the Landlord.

With respect to the allegation of unpaid rent and the issuance of a 10 Day Notice, the issue of unpaid rent is not a consideration for an early end of tenancy under section 56 of the Act. The 10 Day Notice will be considered at the hearing on September 30, 2019.

The Landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed.

If the Landlord believes there is sufficient reason to end the tenancy, the Landlord has the right to issue the Tenant a One Month Notice to End Tenancy for Cause.

Conclusion

The Landlord did not provide sufficient evidence to establish that the Tenant presents an immediate and severe risk to the rental property, other occupants, or the Landlord.

The Landlord's application for an early end of tenancy and an order of possession for the rental unit 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: September 09, 2019

Residential Tenancy Branch