



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 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; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord testified she served the tenant with the Notice of Hearing and Application for Dispute Resolution by posting the notice on the tenant's door on August 12, 2019. The tenant provided a witnessed proof of service of the notice. Based on the undisputed testimony of the landlord and the proof of service, I find the landlord served the tenant with the documents pursuant to section 89 of 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 authorization to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord testified that she went to the rental unit and found the windows and the door to the rental unit were open. The landlord testified that she called out to the tenant but there was no response.

The landlord testified that she contacted the police and she requested a welfare check. The landlord testified that police escorted the landlord through the rental unit. The tenant was not in the rental unit. The landlord testified that she saw evidence of cannabis use in the rental unit even though the rental unit was supposed to be non-smoking. The landlord provided photographs showing what the landlord claimed were cannabis related materials.

The landlord also testified that the tenant left wet clothes in the clothes dryer and water from the dryer had drained onto the wood floor, potentially damaging the floor. The landlord also testified that door knobs were broken. The landlord did not provide any photographs of showing leaking water or damage.

The landlord testified that the tenant was delinquent in rent and utilities.

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 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.

Furthermore, pursuant to *Residential Tenancy Policy Guideline No. 51*, an application for an early end of tenancy must be supported by sufficient supporting evidence:

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 clearly identify a tenant physically, sexually or verbally harassing another tenant.

Based on the testimony of the landlord and my review of the written evidence, I find that the landlord has failed to prove that any of the circumstances described above exist such that it

would be unreasonable or unfair to the landlord or other tenants to serve the tenant with a notice to end tenancy under section 47 of the *Act* and wait for that notice to take effect.

I find that the landlord has not provided sufficient evidence to establish cause for an early end to tenancy. The landlord has not provided any witnesses statements or testimony from the responding police office. Further, the landlord did not provide any photographic or video evidence showing extraordinary damage to the rental unit.

Further, I find that the landlord has not provided sufficient evidence to establish that the tenant poses a risk to the landlord's property such that it would be unreasonable to wait until a notice to end tenancy pursuant to section 47 of the *Act* could take effect.

Consequently, I dismiss the landlord's application.

Conclusion

I dismiss the landlord's application. This tenancy will continue until ended in accordance with the *Act*.

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 24, 2019

Residential Tenancy Branch