



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 for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for an order to end the tenancy early, receive an order of possession, and to recover the cost of the filing fee.

The tenant and the agent for the landlord D.B. ("agent") attended the hearing and gave affirmed testimony and was provided the opportunity to present the landlord's evidence orally and in written and documentary form, and to make submissions to me.

The tenant confirmed having been served with the landlord's documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that they did not serve any documentary evidence in response to the landlord's application.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord has applied for an order of possession to end the tenancy early based on the tenant denying access to the rental unit after being served with a Notice of Inspection document dated August 17, 2019 ("Notice of Inspection"). In the Notice of Inspection, the agent does not indicate the reason for the inspection and does not specifically state they are an agent, they indicate they are "representing" the landlord.

The agent stated that they took over as agent for their father on August 17, 2019, when their father was battling cancer. The agent testified that they requested the inspection of the rental unit and created the Notice of Inspection based on a Hazmat report they found dated September 17, 2018 ("Hazmat report"). The agent stated that they were concerned regarding the details/photos described in the Hazmat report and wanted to inspect the rental unit; however, was denied entry as the tenant parked a car and a bus in front of the front stairwell/entry and did not permit entry to the rental unit.

The tenant did not deny that they parked 2 vehicles in front of the front/entry as they did not have a key to the front door, there was no proper lock from the outside, and there was a hole in the door from the ventilation system that could allow access. The tenant stated that they enter the rental unit from the rear door. There is no dispute that the agent did not advise the tenant that the agent was acting on behalf of the landlord until the Notice of Inspection.

There is also no dispute that the landlord has served a 1 Month Notice to End Tenancy for Cause dated August 23, 2019 ("1 Month Notice"). The 1 Month Notice contains an effective vacancy date of September 23, 2019. The parties confirmed that the tenant disputed the 1 Month Notice and a hearing is scheduled for October 28, 2019.

Analysis

Based on the documentary evidence and the testimony from the parties during the hearing and on a balance of probabilities, I find the following.

Section 56 of the *Act* indicates:

56 (1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession **only if satisfied, in the case of a landlord's application,**

(a) the tenant or a person permitted on the residential property by the tenant **has done any of the following:**

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) 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
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, **and**

(b) 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 [landlord's notice: cause] to take effect.

[Emphasis added]

The burden of proof is on the landlord to prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect. In the matter before me, the effective vacancy date of the 1 Month Notice has passed, and the tenant disputed the 1 Month Notice and a hearing has been scheduled for October 28, 2019.

I find the landlord has provided insufficient evidence to support ending the tenancy early without having to wait for a 1 Month Notice to take effect for two reasons. Firstly, I find the Hazmat report referred to by the agent is over one year old and does not result in the findings in the report to be urgent as the landlord/agent waited almost one full year before applying for this early end of tenancy application. The fact that the agent only

became an agent as of August 17, 2019 is not the fault of the tenant. That is an issue solely between the landlord and the agent. Secondly, I find that denying access to the rental unit does not, in and of itself, meet the two-part test under section 56 of the *Act*, which is described above as sections 56(2)(a) and 56(2)(b) of the *Act*.

Therefore, I find that the landlord has failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the *Act*. As a result, I dismiss the landlord's application in full due to insufficient evidence, without leave to reapply.

As the landlord's application was not successful, I do not grant the landlord the recovery of the filing fee under the *Act*.

Conclusion

The landlord's application is dismissed without leave to reapply, due to insufficient evidence.

I do not grant the filing fee for the reason stated above.

This decision will be emailed to the agent at the email address confirmed for the agent during the hearing. The decision will be sent by regular mail to the tenant as the tenant confirmed they do not have an email address.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: September 26, 2019

Residential Tenancy Branch