



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 a landlord's application for an early end of tenancy and Order of Possession under section 56 of the Act. Both parties appeared at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed service of hearing documents upon the tenant, in person, on October 4, 2019 and additional evidence was served on October 9, 2019.

I explained the hearing process to the parties and I permitted the parties to ask questions relevant to this proceeding.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to recovery of the filing fee paid for this Application?

Background and Evidence

It was undisputed that the month-to-month tenancy started on July 15, 2019 and the landlord collected a security deposit of \$900.00. The tenant is required to pay rent of \$1,800.00 on the first day of every month.

The landlord submitted that in September 2019 it was brought to her attention that the residential property had become a place of suspicious activity. Neighbours had complained of numerous people coming and going from the property at all hours, disturbances, the accumulations of junk in the yard, and the tenant permitting criminals to stay at the property.

On September 20, 2019 the landlord left a notice of entry in the mailbox of the rental unit for an inspection set to take place on September 24, 2019. On September 24, 2019 the landlord, a municipal by-law officer and the RCMP, attended the residential property to inspect the property. Drug paraphernalia associated to drug use and drug trafficking (digital scale and “dime bags”) were found in plain sight. In addition, many items that were likely stolen property were found at the property. The landlord described items still having price tags attached and approximately 7 chain saws, enough tools to outfit a hardware store, 7 to 8 bicycles, and numerous propane tanks at the property, among other things. Several uninsured vehicles were parked on the property, including vehicles with incorrect licence plates.

The RCMP wrote a letter to the landlord on September 24, 2019 describing the activity and police attendance at the property since the tenancy started. The letter confirmed the landlord’s statement that drug paraphernalia commonly associated to drug trafficking was found on September 24, 2019. The RCMP noted that there had been seven calls to the property since the tenancy started, including complaints of uttering of threats; and, stolen property, incorrect license plates on vehicles, and finding a vehicle that had fled from police being located at the property. The police officer opined that the property has become a nuisance property since the tenancy started due to ongoing criminal activity at the property.

The municipal by-law officer wrote a letter to the landlord on September 27, 2019 describing her observation that included finding: “... a significant amount of derelict / unused vehicles, motorbikes, scooters automotive parts, assorted bike parts, numerous propane tanks and other discarded materials in the rear and side yards” that violates the *Untidy and Unsightly Premises Bylaw* 1991. In addition, it was found that the attic is was used as a living space which does not confirm to health and safety standards of the building code. The landlord was given a deadline of October 18, 2019 to bring the property into compliance.

The landlord filed this Application for Dispute Resolution seeking an Order of Possession on September 29, 2019 and served it upon the tenant on October 4, 2019 as she was being arrested for drug trafficking. The landlord did not receive any rent for October 2019.

The landlord also pointed to photographs of the property taken just prior to the tenancy starting and then on September 24, 2019. The landlord also pointed to complaints written by neighbours and the neighbourhood watch page on social media describing the activity taking place at the property.

The landlord submitted that she fears for her own safety and does not go to the property without police escort due to the criminal activity taking place at the property and potential for harm from people high on drugs. The landlord is also concerned her property is being damaged and may be the subject of forfeiture due to drug trafficking from the property.

The tenant acknowledged that she was arrested on October 4, 2019 on charges of trafficking methamphetamines but claims the charges pertain to an "incident" that took place in January 2019. The tenant believes she will be acquitted of the charges.

The tenant agreed that she has not paid rent to the landlord for October 2019, explaining that her cash was seized by the police when she was arrested on October 4, 2019.

The tenant acknowledged that she had guests staying at the property when the landlord inspected the property on September 24, 2019 and that the drug paraphernalia that was seen likely belonged to her guests.

The tenant explained that there are several tools, including chainsaws, at the property because "they" sell firewood to make extra money. The tenant also described her business as involving buying and selling items online. Also, the bicycles and dirt bikes belong to her son even though he does not live with her.

The tenant stated that she was aware of two police calls to the property since the tenancy started: one call was in response to an argument between two of her guests, and another was in response to a disturbance on the street outside of the residential property. The tenant also acknowledged that a motorcycle was seized by police after they asserted it was stolen but the tenant claims she purchased the motorcycle. The tenant also acknowledged that a guest had let their vehicle insurance expire the day before police found it on the street in front of the property and there was also an incorrect license plates on a motorcycle on the property. In addition, the tenant's own vehicle is uninsured and there is a utility trailer stored on the property.

The tenant acknowledged that the yard was cluttered but explained that it was because the tenant had been sorting through containers she had used to previously store her possessions and those possessions had become rat infested while in the containers.

The tenant acknowledged that there is a person currently using the attic space as a bedroom but pointed out this person could move to the downstairs bedroom.

The tenant is of the position that people are unfairly targeting her and the rental property as the source of criminal activity but that it is due to a homeless shelter being located approximately a block away. The tenant denied causing damage to the property that has not been repaired. The tenant also believes the landlord has some sort of

connection with the police since the drug trafficking charges were sworn before a judge one day after the September 24, 2019 inspection.

The tenant pointed out that in September 2019 the landlord had served her with a 2 Month notice to End Tenancy for Landlord's Use of Property with an effective date of November 30, 2019 and that she had intended to vacate by the effective date of the 2 Month Notice.

The landlord acknowledged a 2 Month Notice had been served to the tenant on September 13, 2019 but submitted that circumstances changed since then and the landlord seeks an Order of Possession as soon as possible. The tenant requested an Order of Possession effective November 30, 2019 if the landlord's application is granted given the housing crisis.

Analysis

Section 56 of the Act permits the Director, as delegated to an Arbitrator, to make an order to end the tenancy early, on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. Section 56 provides that the Director may grant the landlord's application where:

(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.

[Reproduced as written with my emphasis added]

The landlord bears the burden of proof in this case. The burden of proof is based on the civil standard, which is on the balance of probabilities, and is not as high as the criminal standard of being beyond a reasonable doubt.

Upon consideration of everything presented to me, including: letters written by the RCMP and the by-law officer, statements of neighbours, the photographs taken by the landlord, and upon consideration of the testimony of both parties, I find, on the balance of probabilities, that illegal activity has been taking place at the residential property; including: drug trafficking, disturbances including threats, and the possession of stolen property. I accept that the volume of junk and stolen property on the property and the frequent coming and going of persons involved in the drug trade or drug use has or is likely to: cause damage to the property and jeopardize a lawful right or interest of the landlord. I find the tenant's explanation of having numerous chainsaws as being for firewood cutting to be unlikely since I did not see any firewood in the photographs presented to me or other evidence to corroborate firewood sales. I also find it unlikely the tenant would have so many bicycles and dirt bikes at the property belonging to her son that does not reside at the property. Rather, I find the presence of numerous tools, bicycles, and vehicles that include stolen vehicles and vehicles without proper insurance or licenses places; accompanied by the presence of drug paraphernalia and the tenant's drug charges to be consistent with this property being used for drug trafficking and trade in stolen property.

Also of consideration is that the landlord's photographs demonstrate that the condition of this property has deteriorated significantly in a very short amount of time since the tenancy started. Given this, I accept that it would be unreasonable for the landlord to wait for a 1 Month Notice to End Tenancy for Cause to take effect or to permit the tenant to occupy the rental unit until November 30, 2019 as she requested. Therefore, I grant the landlord's request for an Order of Possession to be effective as soon as possible.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

The landlord is awarded recovery of the \$100.00 filing fee paid for this Application. I provide the landlord with a Monetary Order in this amount.

Conclusion

The tenancy shall end and the tenant, and all other occupants of the residential property, must vacate the property two days after service of the Order of Possession upon the tenant. An Order of Possession effective two (2) days after service is provided to the landlord with this decision.

The landlord is awarded recovery of the \$100.00 filing fee. The landlord is provided a Monetary Order in the amount of \$100.00 to serve and enforce upon the tenant.

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: October 15, 2019

Residential Tenancy Branch