



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET**

Introduction

This expedited hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56.

WR and DR attended as representatives of the landlord ("the landlord"). The tenant attended with her advocate MB ("the tenant").

The hearing process was explained, and parties were given an opportunity to ask questions. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. The tenants acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. The landlord acknowledged receipt of the tenant's materials. No issues of service were raised except as referenced below. Other than the below referenced document, I find each party served the other in accordance with the *Act*.

Preliminary issue # 1

The parties agreed that the landlord submitted a report dated October 10, 2019 to the RTB which was served upon the tenant on October 10, 2019. The tenant objected to the admission of the document as evidence as it was not filed at the same time as the landlord filed the Application for Dispute Resolution, that is, October 7, 2019.

Section 10 of the Rules of Procedure state as follows:

10.2 Applicant's evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution....

10.4 [...] The respondent's evidence must be served on the other party in a single complete package.

As acknowledged by the landlord, the October 10, 2019 report was not served in compliance with Rules of Procedure section 10.

Accordingly, I will not consider the report in my Decision.

Issue(s) to be Decided

Is the landlord entitled to an order for early termination of a tenancy pursuant to section 56?

Background and Evidence

The landlord and tenant both submitted substantial documentary evidence packages including documentary evidence with indices, photographs, and videos. The parties' contradictory testimony was acrimonious, heated and combative in a lengthy 85-minute hearing. Reference will only be made to key aspects of the evidence. Towards the end of the hearing, the landlord became increasingly angry and outspoken, frequently interrupting the tenant and the arbitrator. The landlord abruptly withdrew from the hearing within the final few minutes; before he hung up, he stated that, "the tenant will not be permitted back on the property today."

The tenancy began in December 2014. Monthly rent is \$948.13. The tenant paid a security deposit of \$450.00. The tenancy agreement is oral, and no documentary evidence relating to the tenancy agreement was submitted. The unit is a basement apartment.

WR and DR live in the apartment above the unit. They reported a history of conflicts with the tenant and multiple efforts to evict the tenant resulting in previous decisions of the RTB, the numbers for which are referenced on the first page.

The landlord issued a One Month Notice to End Tenancy for Cause for which a separate arbitration hearing is scheduled on November 21, 2019.

The tenant asserted that the landlord has filed multiple applications to have the tenant evicted, including a previous Application similar to the current one, which was dismissed on April 12, 2019.

The landlord asserted that the following provisions of section 56 apply:

The tenant has

- (a) [...] (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; [...]*
- (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.*

The landlord claimed that an inspection of the unit by a qualified company has indicated the presence of potentially harmful mold and the unit should be vacated immediately so that proper remediation may begin. The landlord submitted a copy of the report dated October 3, 2019.

The landlord claimed in written and oral submissions, that the tenant attempted to impede the testing, behaved rudely to the inspector, refused to close windows to allow an adequate air sample and “followed the Inspector around with a camera”.

The report’s conclusions were that “due to the poor care and maintenance [by the tenant] a remediation be performed to correct the conditions and return them to a livable state” which required the unit to be vacant.

The relevant portions of the 8-page report state as follows [as written]:

- In the living room there is “lots of clutter, despite just being emptied out and cleaned”;
- In both bedrooms, there is “odor present causing an immediate headache” and “lots of clutter”;
- Air and surface sampling indicated the presence of the following molds: cladosporium and penicillium/aspergillus.
- “We have confirmed the significant presence of mold within the Indoor Sample location, high RH levels and the high potential for health issues in correlation with long term exposures. Contamination is not simply to any single area within the

residence due to potential cross contamination. Professional Remediation inclusive of Air Scrubbing, HEPA Vacuuming, 2 Step Chemical Treatment, De-Humidification back to safe levels.”

- “It is recommended that the lower unit be vacated so proper remediation may be performed. In entering the lower unit there were various traces of water damage, rotted food residue, dust and bug infestations. Due to poor up-keep of the lower unit professional cleaning would also be recommended.”
- Professional cleaning is recommended.
- “I believe the issue was caused due to poor care, water damage and lack of sanitary conditions the suite has been kept in by lower unit tenant.”

The landlord testified he has severe allergies to the air-born substances in the unit, his health and that of his family, is seriously at risk, and the tenant should vacate the unit immediately to allow remediation to begin. The tenant did not submit supporting documentary medical evidence.

The tenant claimed that the report falls short of saying it was dangerous to enter the unit or that the landlord was at any health risk. The tenant disputed the methods used by the company in conducting the testing as well as the conclusions drawn. The tenant asserted that the report does not follow recommended guidelines for remediation and submitted sample redacted air quality reports prepared properly and in a different manner.

The furnace for the building is in the unit. The landlord claimed that an “unbearable smell” emanates from the tenant’s unit; as the landlord’s venting system brings in air from the unit into the landlord’s living space, the landlord has sealed the vents. As a result, the landlord has no heat at a time of the year when heat is needed for the comfort of the landlord and family. The landlord claimed that the health and safety of the landlord and family are at risk, the unit should be vacated immediately, the source of the smell ascertained, and odor remediation carried out forthwith.

The landlord stated that on September 19, 2019, a municipal fire department came to the landlord’s home in response to the landlord’s call about the odor emanating from the tenant’s unit. The landlord testified that when he turned the furnace on, the attendees noticed a foul odor like rotting garbage and immediately left the building.

The tenant denied that her belongings are “damp, rotting, or smelly” and stated that the smell comes from something else other than her belongings.

The landlord asserts it would be unreasonable or unfair to the landlord to wait for the One Month Notice to be heard on November 21, 2019.

The landlord claimed the unit is heavily infested with silverfish and the tenant should vacate immediately so that proper remediation can take place.

The landlord submitted correspondence with the tenant about the presence of silverfish in the unit, plans to hire an exterminator and an invoice dated September 14, 2019 from a pest control company. In written and oral submissions, the landlord testified that the tenant has caused the silverfish by having “an extraordinary amount of clutter (boxes and garbage bags) stored in her suite, from floor to ceiling and not cleaning for over 4 years”, the continued presence of which prevented a complete eradication.

The tenant stated that remediation has been successful and there is no emergency or need for her to vacate the unit right away.

The landlord submitted substantial copies of correspondence with the tenant about various additional issues, such as the tenant’s items in the backyard, failure of the tenant or her advocate to properly serve documents, the tenant’s groundless complaints about the landlord’s music, and the tenant parking on the grass. The landlord submitted supporting documentary evidence such as police incident report numbers and photographs.

The landlord submitted a copy of the One Month Notice dated September 25, 2019 which contains an effective date of October 31, 2019 and is scheduled for hearing November 21, 2019.

On October 6, 2019, the landlord filed an Application for an Expedited Hearing dated October 6, 2019.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to 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 of notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section states:

Application for order ending tenancy early

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.*

For me to grant an order under section 56(1), I must be satisfied as follows:

56 (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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

In this case, the tenant undoubtedly has a large quantity of personal items in the rental unit and there is the presence of silverfish. The presence of silverfish in and of itself does not give rise to a significant risk to property or health or safety. These circumstances do not in themselves indicate the landlord's property is at significant risk and that it is unreasonable or unfair to the landlord to wait for the upcoming hearing.

I accept the landlord's testimony supported by documentary evidence that a strong, unpleasant odor enters the landlord's home when the furnace is turned on. However, the source is not clear and discussion during the hearing concerned the possibility the smell is coming from the heating vents which may need cleaning; the landlord acknowledged the vents have not been cleaned in some time. I find the odor does not in itself establish that the landlord's health or property is at significant risk and that it is unreasonable or unfair to the landlord to wait for the upcoming hearing.

While the landlord undoubtedly has cause for concern about mold in the unit, it does not follow that the levels of mold indicated in the submitted report seriously jeopardizes the health and safety of the landlord or another occupant. The report recommends the unit be vacant for remediation to occur, but the report does not specify that the unit must be vacant immediately. The landlord's testimony and supporting documentary evidence does not establish that it is unreasonable or unfair to the landlord to wait for the scheduled hearing.

As discussed, the landlord already issued a One Month Notice scheduled for hearing on November 21, 2019. In all the complaints listed by the landlord, he landlord did not provide a reasonable explanation as to why it would be unreasonable, or unfair to the landlord and other occupants, to wait for this hearing.

Given the history between the parties, I find the landlord wanted to end the tenancy now and did not want to wait until the hearing, even though it is less than one month away.

The state of the rental unit (primarily clutter, odor, mold and silverfish) is what led the landlord to issue the One Month Notice dated September 25, 2019. There is no evidence that the condition of the rental unit substantially changed or became more serious since then. As such, I am not inclined to find that the state of the rental unit gave rise to a reasonable circumstance where an early end of tenancy is warranted under

section 56.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for an order under section 56 of the Act. As such, I dismiss the landlord's application without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply.

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 26, 2019

Residential Tenancy Branch