



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for an Expedited Dispute Resolution Hearing, made on October 18, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlord and the Tenants attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord testified that she served her Application and documentary evidence package to the Tenants by registered mail, in person, and by e-mail on October 23, 2019. The Tenants confirmed receipt. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenants did not submit any documentary evidence in preparation for the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 31, 2019. Currently, the Tenants are required to pay rent in the amount of \$1,450.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$725.00.

The Landlord stated that she is seeking to end the tenancy early based on the fact that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The Landlord stated that she has had concerns with the Tenants since the start of the Tenancy. The Landlord stated that the Tenants have failed to pay rent on several occasions, which has resulted in the Landlord serving several 10 Day Notices to End Tenancy for unpaid rent. In response, the Tenants stated that they have paid rent in full since the start of their tenancy.

The Landlord stated that the Police attended the rental unit on April 2, May 23, and July 4, 2019 in relation to ongoing violence and threats. The Landlord stated that other occupants in the rental property are concerned for their safety as a result. The Landlord stated that she asks Police to attend staff members who attend the rental unit to ensure their safety. Furthermore, the Landlord stated that she is receiving fines from the Strata as a result of the ongoing Police attendance to the rental unit. The Landlord provided strata notices in support.

In response, the Tenants denied any violence occurring in the home and stated that the Police attended the rental unit in response to noise complaints. The Tenants stated that the noise was caused by a guest who is no longer permitted to attend their rental unit. The Tenants denied that they have ever been apprehended as a result of the Police contact.

Lastly, the Landlord stated that the Tenants have caused significant damage to the rental unit as all the locks are broken and there are holes in all the closet doors as well as in the walls throughout the rental unit. The Tenants stated that one of the closet

doors in the rental unit has come off the track. The Tenants denied any damage to locks or holes in the doors and walls.

For these reasons, the Landlord is seeking to end the tenancy early. The Landlord stated that she has not served the Tenants with a One Month Notice for Cause. If successful, the Landlord is seeking the return of the filing fee paid to make the Application.

Analysis

Based on the unchallenged and affirmed documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

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...

- (a) *The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.**

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, The Landlord indicated that the reason for seeking an order of possession was in relation to ongoing concerns regarding the Tenants failing to pay rent, Police attendance to the rental unit for violence and threats, and damage to the rental unit.

In relation to the Landlord's claim that the Tenants have failed to pay rent, I find that failure to pay rent does not constitute immediate and severe risk. I accept that the Landlord has served several 10 Day Notices to end tenancy throughout the tenancy. I find that the Landlord is at liberty to submit an application seeking remedies under the Act in relation to unpaid rent.

I find that the Landlord has provided insufficient evidence to support that the Tenants have been violent and have threatened others occupant at the rental property. Furthermore, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenants have caused damage to the rental property.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act.

In light of the above, I dismiss the Landlord's Application, without leave to reapply.

As the Landlord was not successful with their Application, the Landlord is not entitled to recover the filing fee from the Tenant.

Conclusion

The landlord has provided insufficient evidence to prove the tenancy should end early under Section 56 of the *Act*. The 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: November 05, 2019

Residential Tenancy Branch