



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 order for an early termination of tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56;
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The tenant did not attend the hearing although I left the teleconference hearing connection open until 11:10 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenant with the Notice of Expedited Hearing and evidence on October 23, 2019. The landlord provided proof of service document that includes the signature of a witness to the personal service. I am satisfied the tenant has been served with the Notice of Expedited Hearing on October 23rd in accordance with section 71(2)(a) of *Act*.

Issue(s) to be Decided

Has the landlord successfully shown the tenancy should be terminated early due to an immediate and severe risk to the landlord's property or to other occupants?

Background and Evidence

The landlord gave the following undisputed evidence. The rental unit consists of a two bedroom condominium. The condominium is shared with two other occupants with all occupants having use of a common kitchen and living room. The tenant moved into the rental unit under her own tenancy agreement, provided as evidence by the landlord for this hearing.

The tenancy started on September 1, 2019 and was for a fixed one year term, to become month to month at the end of the first year. Rent was set at \$1,350.00 per month payable on the first day of the month. An addendum to the tenancy agreement notes the following:

Smoking: cigarettes or any other type of smoking is not permitted at all within the unit or on the balcony. If smoking outside, all cigarette butts/waste must be disposed of before re-entering the property.

The landlord testified that he received complaints from the other two occupants of the rental unit regarding the tenant smoking. The landlord testified he and the other occupants couldn't prove the tenant was smoking as the tenant denied doing so. The landlord then purchased an air quality tester and discovered that the unit was testing 'high' for formaldehyde. The landlord could not recall the date of the testing.

In evidence, the landlord provided a letter from the other occupants of the condominium dated October 8th listing the various complaints they had against the tenant. These include one instance of a gas burner being inadvertently left on as well as complaints about the lack of cleanliness and respect for the other occupants by making noise and allegations about possible smoking in the unit. The landlord testified he came to inspect the unit and could not discern the smell of smoke himself the day of his visit. The landlord did not specify the date he visited.

On October 12th, the landlord served the tenant with a One Month Notice To End Tenancy for Cause. The Notice was not provided for this hearing. The landlord testified the effective date stated on the Notice was November 30th, but he didn't want to wait that long because the other occupants of the unit were being harmed by the tenant's cigarette smoke.

The landlord testified he took a reading in the hallway with his air quality tester and received a reading of 0.00. The landlord testified he thinks the other occupants of the unit did another test and got a reading of 0.183. The landlord testified the W.H.O.

maximum is 0.1. The landlord did not specify in his testimony what the units being measured indicated.

Lastly, the landlord testified the tenant has failed to pay rent for the month of November. He has served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and has filed an application for an Order of Possession by Direct Request.

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.

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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an

imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit. (bold emphasis added)

...

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).

The landlord has provided evidence of interference with other occupants of the residential property potentially justifying an end to the tenancy based on the Month to End Tenancy for Cause pursuant to section 47 of the *Act*. Although the landlord has served the tenant with a One Month Notice, he has not filed an application for dispute resolution seeking an Order of Possession based on this Notice. The landlord testified he has not taken any steps to follow through on the Notice he served. Once again, in order to succeed in an application for an Early End to Tenancy, the landlord must satisfy me that it would be unreasonable to wait for the One Month Notice to take effect. I must be satisfied there is an imminent danger to the landlord, the other occupants or the landlord's property. I find I have not been provided with sufficient evidence to show it would be unreasonable to wait for the One Month Notice to take effect.

There are no incidents of a serious breach to the tenancy agreement such as actual violence caused by the tenant or her guest. Although smoking was prohibited in the addendum to the tenancy agreement, the landlord has not provided any evidence to show the tenant is about to cause imminent harm to the other occupants. The evidence of the unacceptable levels of formaldehyde were not corroborated by sufficient evidence of what constitutes a 'safe' level. The landlord's offhand testimony of what the W.H.O. considers 'safe' was unsubstantiated.

Given the evidence before me, I am not satisfied there is an imminent danger to the health, safety, or security of a landlord or tenant that would cause me to end the tenancy early pursuant to section 56 of the *Act*. Accordingly, the landlord's application is dismissed.

As the landlord's application was not successful, the landlord is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord's application for an early end to tenancy pursuant to section 56 of the *Act* is dismissed.

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 12, 2019

Residential Tenancy Branch