



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession to end the tenancy early pursuant to Section 56 of the *Act*, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as was one of the co-tenants (the “Tenant”). The Tenant stated that she co-signed the tenancy agreement with her son but does not reside in the rental unit. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Tenants did not submit any evidence prior to the hearing.

The Landlord testified that he served both Tenants with a copy of the documents and provided a registered mail tracking information into evidence regarding the packages sent to both Tenants. The information submitted shows that the package to Tenant J.C. was delivered on October 20, 2019 as confirmed by the Tenant at the hearing. The registered tracking number for the package sent to Tenant M.C. is included on the front page of this decision. Entering the number onto the Canada Post website confirms that the package was unclaimed by the Tenant. Therefore, I find that both Tenants were served in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to an Order of Possession to end the tenancy early pursuant to Section 56 of the *Act*?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy began on March 15, 2019. Current monthly rent is \$2,700.00 and a security deposit of \$1,350.00 was paid at the start of the tenancy.

The Landlord testified that there have been many issues with the tenancy. He stated that Tenant M.C. changed the locks and would not allow the Landlord to enter the rental unit. He stated that due to this they scheduled an inspection and upon entering the rental unit found significant damage. The Landlord stated that this included finding the stove smashed and significant damage to the floors and walls. The Landlord submitted photos of the damage throughout the rental unit.

The Landlord stated that they served the Tenants with a One Month Notice to End Tenancy for Cause (the "One Month Notice") on October 24, 2019. A copy of the One Month Notice was submitted into evidence with an effective end of tenancy date of October 30, 2019. The Landlord stated their request for an Order of Possession effective November 30, 2019 as they don't believe the Tenant will move out as of the effective date of the One Month Notice.

The Tenant did not dispute the damage in the rental unit and stated that she had discussed with the Landlord that the damage would be repaired once Tenant M.C. moved out. The Tenant was unsure whether Tenant M.C. was still residing in the rental unit and was unsure as to whether he will move out on the effective date of the One Month Notice.

Analysis

The Landlord applied for an order to end the tenancy early pursuant to Section 56 of the *Act*. Section 56(2) outlines the reasons why a tenancy may be ended early and Section 56(2)(b) states the following as a further requirement of an application under this section as follows:

(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 provided photos which show significant damage to the rental unit of which the Tenant did not deny. The Landlord also requested an Order of Possession effective November

30, 2019 to uphold the effective end of tenancy date of the One Month Notice due to concerns that Tenant M.C. will not move out.

Therefore, while significant damage to the rental unit may be a reason to end a tenancy early, I am not satisfied that the Landlord met the requirements of Section 56(2)(b) as he did not establish that it would be unreasonable or unfair to wait for a One Month Notice to take effect. I find this to especially be the case given that the Landlord requested an Order of Possession for the effective date of the One Month Notice that was served to the Tenants on October 24, 2019, instead of an order to end the tenancy immediately.

Accordingly, I do not find that this application meets the requirements under Section 56 of the *Act*. An application through this process is scheduled quickly due to an immediate or urgent need to end a tenancy such that a One Month Notice would not take effect soon enough. However, this process is not meant to bypass the process for applying for an Order of Possession based on a One Month Notice and instead is reserved for serious matters where a tenancy should end immediately.

Therefore, I decline to award an Order of Possession to the Landlord pursuant to Section 56 of the *Act*. The Landlord had the burden of proof in this matter and I am not satisfied that the Landlord is entitled to end the tenancy early pursuant to Section 56 of the *Act*. The Landlord is at liberty to file a new application should they choose to file for an Order of Possession on the One Month Notice, but this is not the process to do so.

As the Landlord was not successful with the application, I decline to award the recovery of the filing fee. The application is dismissed, without leave to reapply.

Conclusion

The Application for Dispute Resolution 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: November 13, 2019

Residential Tenancy Branch