



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 early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served with the landlord's application for dispute resolution package and evidence on November 8, 2019, by way of registered mail and by personally serving the tenant. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with the landlord's Application and evidence on November 13, 2019, 5 days after mailing. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

The landlord testified that no written tenancy agreement exists. The landlord submitted a copy of a receipt dated October 25, 2019 from when the tenancy began. The landlord testified that he had allowed the tenant to move in upon payment of \$1,000.00. \$700.00 was for rent for the period of October 25, 2019 through to November 1, 2019. The landlord testified that the tenant was to move out on November 2, 2019, but failed to do so. The landlord testified that the tenant had agreed to this arrangement by signing the receipt.

The tenant paid \$100.00 for the key FOB, and another \$200.00 for the move in and move out fees. The landlord testified that he did not collect a security deposit from the tenant. The landlord testified that on November 2, 2019 he contacted the tenant by phone as the tenant failed to move out or pay him any further rent. The landlord testified that the tenant threatened to cause harm to him, as well as damage the landlord's property. The landlord submitted that he also received a text message from an occupant who is also residing there which read: "PLEASE DON'T TEXT ME MORE OK AND STOP AND STOP BOTHER ME OK NOW YOU KNOW". The landlord testified that he had contacted the police, but was informed that this was a matter under the jurisdiction of the RTB. The landlord provided a police file number in his application.

The landlord personally served the tenant with a 10 Day Notice for Unpaid Rent on November 2, 2019. The landlord provided a copy of this 10 Day Notice in his evidentiary materials as well as proof of service.

The landlord is seeking an Order of Possession pursuant to section 56 of the *Act*, as well as recovery of the filing fee for this application.

Analysis

The landlord, in their application, requested an Order of Possession on the grounds that the tenant has not paid rent and refuses to move out, as well as the fact that the landlord feels threatened by the tenant.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, 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.

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord provided sworn testimony that he was threatened by the tenant and another occupant, as well as documented proof of the landlord's attempt to end this tenancy by way of a 10 Day Notice for Unpaid Rent.

The landlord has not served the tenant with a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, nor has the landlord applied for an Order of Possession pursuant to any Notices to End Tenancy. The landlord, in his application, is attempting to obtain an early end to tenancy as he feels the tenant has acted in a threatening manner, and has failed to move out or pay rent to the landlord by November 2, 2019.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although I find that the landlord testified that the tenant was served with a 10 Day Notice to End Tenancy on November 2, 2019, the landlord did not make an application for an Order of Possession pursuant to that 10 Day Notice. Despite the landlord's concerns about the tenant's behaviour, the landlord has not issued the tenant any 1 Month Notices to End Tenancy for Cause. The landlord's failure to pursue an Order of Possession pursuant to a 10 Day Notice or a 1 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. Although the landlord has provided supporting evidence to demonstrate that the police have been contacted regarding this tenancy, I find that the landlord has not provided sufficient evidence to support that the tenant has engaged in illegal activity that has jeopardized the lawful right of the landlord or other occupants.

Although I am sympathetic to the landlord, and the fact that he feels stressed and threatened by the tenant's behaviour, I find that the landlord failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

As the landlord was not unsuccessful in this application, I dismiss the landlord's application to obtain the recovery of his filing fee from the tenant.

Conclusion

I dismiss the landlord's application in its entirety. This tenancy continues 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 25, 2019

Residential Tenancy Branch