



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cemetery Mountain Holdings
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with a landlord's application for an early end of tenancy and Order of Possession under section 56 of the Act. Only the landlord's agent appeared for the hearing. There was no appearance on part of the tenant despite leaving the teleconference call open approximately 25 minutes.

Since there was no appearance on part of the tenant, I explored service of hearing documents upon the tenant. The landlord's agent testified that the proceeding package and all of the landlord's evidence was sent to the tenant via registered mail on November 26, 2019 using the rental unit address. The landlord had submitted a registered mail receipt, including tracking number, to prove the tenant was sent the hearing documents via registered mail on November 26, 2019. A search of the tracking numbers showed that Canada Post had left notice cards for the tenant to pick up the registered mail on two occasions and the registered mail has yet to be picked up. The landlord testified that she also sent text messages to the tenant to inform her about this proceeding.

The landlord testified that the tenant has not been using the rental unit as her ordinary place of residence since October 2019; however, the tenant still has many personal possessions in the rental unit and, via text message with the landlord's agent, indicates that she will be returning to retrieve them, and the tenant has not given up possession of the rental unit. The landlord's agent also testified that the tenant has not provided the landlord with her current address of residence but informed the landlord's agent that she continues to retrieve mail sent to her at the rental unit address.

In light of the above, the landlord is not satisfied it is in a position to consider the personal property of the tenant to be abandoned under the abandoned property rules, but the landlord has no where else to serve the tenant with the documents for this proceeding.

Section 89 of the Act provides for ways an Application for Dispute Resolution must be served. In this case, the landlord used registered mail and when a tenant is served by registered mail it must be sent to the tenant's address of residence or the tenant's forwarding address. It would appear the rental unit address is no longer the tenant's address of residence and the landlord does not have a forwarding address for the tenant but that the tenant has expressed that she still receives her mail at the rental unit address. Therefore, I find it appropriate in these circumstances to deem the tenant sufficiently served with the hearing package pursuant to the authority provided to me under section 71(2) of the Act. To not deem the tenant sufficiently served would result in the landlord not being able to commence a proceeding to regain possession of the property. Section 71(2) provides as follows:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Pursuant to section 71(2) I order that the proceeding package was sufficiently served upon the tenant for purposes of the Act five days after the registered mail was sent to the tenant in keeping with section 90 of the Act which deems a person to be in receipt of documents mailed to them five days after mailing.

Having ordered the tenant sufficiently served with notification of this proceeding, I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy started on April 1, 2018 and the tenant was required to pay rent of \$900.00 on the first day of every month. The landlord's agent testified that the landlord is not holding a security deposit.

The landlord testified that in September 2019 ministry officials removed the tenant's three children from the property and a few days later the SPCA removed three dogs from the property.

The landlord testified that in the latter months of the tenancy the rent had been paid by a lawyer, on behalf of the tenant, up to and including the month of October 2019 since the tenant had been in a significant accident; however, the payments ceased after October 2019.

On November 4, 2019 the landlord attended the property to post a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord found the property to be in deplorable condition. The landlord returned on November 15, 2019 and discovered stolen goods on the property and the house unfit for habitation. The landlord described the house as being uninhabitable due to: dog feces everywhere, broken items and broken glass, black mould, the toilet not working, and huge mounds of wet clothing and other debris strewn about. The landlord took photographs which were provided as evidence.

The landlord has also been in communication with the police and determined the property has become a place where stolen goods are stored and a nuisance property. The police provided the landlord with file numbers and a description of incidents involving the non-violent offences only at the residential property. Included on the list was a description of attendance for removal of the children and the dogs in September 2019 and the location of a stolen boat on the property in October 2019 and a stolen "genie" (machinery) found on the property November 15, 2019. The landlord's agent testified the police have been at the property numerous other times but cannot disclose more information due to the nature of their attendance and privacy reasons.

The landlord proceeded to make this Application for Dispute Resolution to regain possession of the rental unit as soon as possible and did not pursue an Application for Dispute Resolution for orders related to unpaid rent as the landlord was of the belief that process would take longer and the landlord's primary concern is to regain possession of the property given its condition and its use for illegal activity.

As described earlier, the landlord's agent has had text message communication with the tenant and the tenant indicates she will be returning to the property to clean up and retrieve her possessions, but she often fails to follow through. Nor, does the tenant return possession of the property to the landlord. As such, the landlord has not considered the property to be abandoned and seeks an Order of Possession effective as soon as possible.

The landlord did not request recovery of the filing fee paid for this application.

Analysis

Section 56 of the Act permits the Director, as delegated to an Arbitrator, to make an order to end the tenancy early, on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. Section 56 provides:

(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.

[Reproduced as written with my emphasis added]

Based on the landlord's unopposed testimony and evidence, including several photographs of the property, I accept that the residential property is very unsafe and unfit for habitation, and is attracting illegal activity.

It appears that the tenancy may have ended for unpaid rent; however, in hearing from the landlord and seeing the evidence, I accept that the landlord's primary motivation is to regain possession of the residential property due to the condition of the property and its use to store stolen goods and much less due to unpaid rent.

In light of the above, I find the landlord has sufficiently satisfied me that there are grounds to end the tenancy under section 56 of the Act because the tenant, or a person permitted on the property by the tenant has: (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and, (iii) put the landlord's property at significant risk; and, it would be unreasonable to wait for a 1 Month Notice to End tenancy for Cause to take effect given the severely poor and unhygienic condition of the property. Therefore, I grant the landlord's application under section 56 of the Act and I order the tenancy shall end two days after service of the Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective two days after service. Since the landlord is aware of the tenant's current address of residence, I order the landlord to serve the Order of Possession by posting it on the door of the rental unit and any other conspicuous place on the residential property that the landlord

considers appropriate. The tenant will be deemed to have received the Order of Possession three days after it is posted.

Conclusion

The landlord's application is granted. The tenancy shall end two (2) days after service of the Order of Possession that provided to the landlord with this decision. The Order of Possession is to be served by posting on the door of the rental unit and any other conspicuous place on the residential property the landlord considers appropriate.

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: December 13, 2019

Residential Tenancy Branch