



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL CNC

Introduction

This expedited hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An early end of the tenancy pursuant to section 56; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- Cancellation of the 1 Month Notice for Cause pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Both parties had family members assisting.

As both parties were present service of the materials was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

This periodic tenancy began in 2019. The monthly rent is \$1,400.00 payable on the first of each month. A security deposit of \$700.00 was collected and is still held by the landlord.

The landlord issued a 1 Month Notice dated November 17, 2019. The landlord checked off the portion of the notice indicating the reasons for the tenancy to end is that the:

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest o reasons are provided for the notice.*

No details of the cause are provided on the notice.

The tenants filed their application to dispute the notice on November 26, 2019.

The landlord subsequently issued a second 1 Month Notice dated November 29, 2019. The reasons provided on this notice for the tenancy to end is that the:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *put the landlord's property at significant risk.*

The details provided of the cause are that; the tenants smoke on the property despite the written tenancy agreement prohibiting smoking, that the tenants conduct themselves noisily disturbing the landlord and that the tenants have failed to take proper care of the suite causing the need for maintenance.

The parties mentioned one incident where emergency services were called to the rental unit. The landlord submits that the relationship with the tenants has become hostile and antagonistic.

The tenants filed an amendment to their application dated December 4, 2019 to dispute the November 29, 2019 notice.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

In the present case the landlord issued two successive notices to end tenancy dated November 17, 2019 and November 29, 2019. The tenants filed their application in response to the November 17, 2019 notice on November 26, 2019 and an amendment to their application to dispute the November 29, 2019 notice on December 4, 2019. As such, I find that the tenants have filed their application to dispute each of the notices within the timeline provided under the *Act*.

The landlord seeks an early end of the tenancy. 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.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

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.

Based on the evidence, I find that the landlord has not met their evidentiary burden to show that there is a basis for this tenancy to end, either in accordance with section 56 or on the basis of either of the 1 Month Notices.

The reasons provided by the landlord are merely subjective complaints, with minimal documentary evidence in support. I find that the tenant's smoking on the rental property or noise complaints falls far short of a basis for an early end of the tenancy. Even if all of the landlord's complaints were accepted on their face, I find that there is little evidence that it would be unreasonable or unfair to wait for a notice to take effect. I find little evidence that there is any urgency to end the tenancy, beyond the landlord's desires. Smoking, noise complaints and lack of maintenance may be a minor annoyance but is not so egregious that it would be unreasonable to wait for a notice to take effect.

I further find that the landlord's complaints are insufficient to meet their evidentiary onus to establish a basis for the 1 Month Notice. I find that the landlord has not provided sufficient evidence of any illegal activity conducted by the tenant or any person allowed on the property by the tenant. The parties agree that there was a medical incident where emergency services were called but I find that a single instance of calling medical services to be insufficient to find that there has been any illegal activity or that the tenants have significantly interfered with others.

The landlord's complaints about smoking, noise and the condition of the suite are supported with little evidence. I do not find the landlord's testimony or written submissions to be supported in the documentary evidence. The landlord's submissions are refuted by the tenants. The landlord claims that the tenants smoke but the allegation is not supported in independent evidence and is disputed by the tenants. Therefore, the landlord has not met their evidentiary burden on a balance of probabilities. In any event the landlord's complaints are minor infractions that I find would be better characterized as slight annoyances rather than a significant interference or unreasonable disturbance such that it would give rise to a basis to end the tenancy.

Similarly, I find the landlord's submission that there is damage or risk of damage to the rental unit to not be supported in the evidence. The landlord's primary submission on this point is that there was a reported leak but the landlord has not provided anything more than the suspicion of an unnamed third party repairman with whom the landlord had a conversation. I find that this submission to be insufficiently supported and to not have the air of believability.

I find that cumulatively and individually the landlord has failed to meet their evidentiary burden to show that there is any basis for this tenancy to end.

I find that the landlord's application for an early end of the tenancy to be an abuse of the expedited hearing process designed to jump the queue and obtain an earlier hearing date.

Accordingly, I dismiss the landlord's application in its entirety. The tenants application to cancel the 1 Month Notices are granted. This tenancy continues until ended in accordance with the Act.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenants' application is granted. The 1 Month Notice of November 17, 2019 and November 29, 2019 are both cancelled and of no further force or effect. This tenancy continued 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: January 10, 2020

Residential Tenancy Branch