



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on December 11, 2019. The tenant stated that no documentary evidence was submitted. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided written details that the tenant "is threatening to "fight this down to the bone" with the owner. The owner is concerned of their own safety Tenant has also

caused smoke downstairs and is refusing to take ownership and blaming others. There is no picture proof of the smoke incident, however, the tenant's housemate can testify against this."

Extensive discussions with both parties were made in that the description provided, evidence submitted, do not demonstrate that the tenant poses an immediate risk or threat to the rental unit, other parties or the landlord. The landlord confirmed in his direct testimony that he did receive an email informing him of these issues and a request to change his application or add additional relevant evidence. The landlord stated that he was informed by an information officer that by not responding or making any changes that the scheduled hearing would no longer be a priority and would be scheduled as is. The landlord stated that he chose not to make any changes or add additional evidence. The landlord reiterated that the issue with the tenant was smoking in the rental unit. The landlord also confirmed that he did issue a notice to end tenancy on this issue. The landlord also stated that both parties had entered into a mutual agreement to end the tenancy. The tenant disputed these claim.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property;
 - 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
 - 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.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be “unreasonable or unfair” to wait for a cause notice to take effect.

It is clear based upon the undisputed affirmed evidence of the landlord that neither the description provided, nor the evidence submitted, demonstrate that the tenant poses an immediate and severe risk to the rental property, other occupants, or the landlord. The landlord also confirmed that a notice to end tenancy had been issued and that these issues were related to smoking in the rental unit.

I find on this basis, that the landlord has failed to meet the statutory requirements under section 56 as was already cautioned by the Residential Tenancy Branch Information Officer in an email. The landlord confirmed receipt of this email and chose to proceed despite its warning.

Conclusion

The landlord’s application 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: January 10, 2020

Residential Tenancy Branch