



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was scheduled to deal with a landlord's application made on December 16, 2019 for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act. The landlord appeared at the commencement of the hearing; however, the tenant was not in attendance.

Since the tenant was not present at the commencement of the hearing, I proceeded to explore service of hearing documents upon the tenant. The landlord testified that he sent the proceeding package and evidence to the tenant, via registered mail, although he did know the date of mailing and he did not have the registered mail tracking number before him. The landlord explained he was at work and did not have such information with him and that he could not leave work to get the information.

As for the documents included in the package sent to the tenant, the landlord indicated he could not recall all the documents he sent to the tenant since he did not have them in front of him but he claimed to have sent everything he was supposed to.

This hearing was scheduled as an "expedited hearing" because the landlord had indicated that "This is an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord". The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits. In processing the landlord's Application for Dispute Resolution, on December 17, 2019 the Residential Tenancy Branch cautioned the landlord that, based on what he had submitted with the Application, he may not be entitled to the remedy he is seeking and to consider amending the Application by December 20, 2019. The landlord resubmitted the same Application without changes on December 17, 2019 and the Application was scheduled as an "expedited hearing".

On December 23, 2019 the landlord submitted an Amendment to an Application for Dispute Resolution indicating he was seeking an Order of Possession based on a 1 Month Notice to End Tenancy for Cause dated November 28, 2019 but the matter was already scheduled as an expedited hearing. The landlord did not provide a copy of a 1 Month Notice to End Tenancy for Cause and the tenant had filed to dispute a 1 Month Notice with a hearing set for January 27, 2020.

As provided in Residential Tenancy Branch Policy Guideline 51: *Expedited Hearings*:

Except where required in the circumstances, an expedited hearing is not a way to bypass normal service and response time limits to get a quicker hearing. Therefore, once an application for an expedited hearing is made, it cannot be amended except at the hearing with the permission of the arbitrator.

This is to prevent applicants from “queue jumping”, for example, by applying for emergency repairs and then amending the application to request repairs for the replacement of a fridge or oven which is not considered an emergency. Another example is applying for an early end to the tenancy and then attempting to amend the application for an order of possession for unpaid rent and a monetary order for unpaid rent. These types of applications are not appropriate for the expedited hearing process.

Considering this hearing had been scheduled as an expedited hearing, and the parties already have a hearing scheduled to deal with a 1 Month Notice to End Tenancy for Cause, and I did not have a copy of a 1 Month Notice before me, I did not permit the amendment of this application. I asked the landlord if he remained of the position the circumstances are so urgent and severe that the tenancy should be ended under section 56 of the Act. The landlord indicated that an emergency situation exists and that he wished to proceed with his original application for an early end of tenancy under section 56. I informed the landlord that I would continue to hear the matter, conditional upon receiving the registered mail receipt to prove the tenant was notified of this proceeding.

Shortly thereafter, the tenant joined the teleconference call hearing. The tenant stated he was late because he had fallen asleep. I informed the tenant that I would not be dealing with the 1 Month Notice and that the parties are expected to deal with the 1

Month Notice, as scheduled, for January 27, 2020 and that I was hearing the landlord's application for an early end of tenancy.

The tenant confirmed that he had received the landlord's Application for Dispute Resolution and two witness statements by registered mail. The tenant stated he had not received an Amendment. Since the tenant confirmed receipt of the landlord's original Application for Dispute Resolution I no longer required the landlord to provide me with the registered mail receipt.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and an entitlement to an Order of Possession as provided under section 56 of the Act?

Background and Evidence

The landlord testified that he purchased the subject property on October 25, 2019 and the subject tenancy was pre-existing.

The landlord stated he believed the tenancy had started in December 2018. The tenant testified that it started in December 2017.

The parties were in agreement the landlord is holding a security deposit of \$448.00 and the tenant is required to pay rent of \$896.00 on the first day of every month.

The landlord submitted that the tenant is smoking in the rental unit and this has resulted in damage to the property by way of smoke permeating the walls and ceiling in the rental unit and the upper unit. The landlord submitted that the smoke is also a health and fire hazard. The landlord testified that the upper unit is currently vacant but that new tenants are expected to take possession at the end of the month but that the smoke has put the landlord's health at risk while he has been renovating the upper unit.

The landlord testified that he spoke with the tenant in October 2019, before he purchased the property, to introduce himself and inform the tenant that the tenant would have to smoke outside. The landlord testified that he noticed the smell of smoke again and on November 5, 2019 and he told the tenant not to smoke inside. The landlord continued to notice the smell of smoke on and off thereafter and then he spoke with the tenant about it again on November 14, 2019. On November 28, 2019 the landlord had

had enough of the tenant's smoking and issued a 1 Month Notice to End Tenancy for Cause to the tenant.

The landlord did not make any submissions concerning the tenant's actions after issuance of the 1 Month Notice except to state the tenant disputed the 1 Month Notice.

The tenant acknowledged that he had been smoking since September 2019 and the landlord did talk to him about smoke over the phone in October 2019. The tenant testified that he got a prescription for medication to help him stop smoking on November 5, 2019 and he has not smoked since November 8, 2019. The tenant acknowledged that the landlord did speak to him once more in November 2019 about smoking whereby the landlord asked him if he was smoking and the tenant denied that he was. Then, he did not hear anything more about it until the landlord served him the 1 Month Notice to End Tenancy or Cause on November 28, 2019, which the tenant filed to dispute.

The tenant acknowledges the house does smell strongly of smoke since the previous owner smoked for many years. The landlord did not dispute that assertion but claimed the smell he is referring to is the smell of fresh cigarette smoke.

Analysis

Section 56(2) 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. In order to grant an order to end the tenancy early under this provision I must be satisfied that:

- (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]

The landlord bears the burden to prove the tenant, or persons permitted on the property by the tenant, has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice to End Tenancy for Cause. The burden is high as this provision is intended to apply in the most urgent and severe circumstances.

The issue put forth by the landlord concerns allegations the tenant has been smoking inside the rental unit. While smoking in the rental unit may be a basis for ending a tenancy for cause, in order to grant an Order of Possession based on the application before me, I must be satisfied that it is unreasonable to wait for a 1 Month Notice to End Tenancy for Cause to take effect. According to the landlord he has been concerned about the tenant smoking in the rental unit since October 2019 and he spoke to the tenant twice: on November 5 and 14, 2019. If the circumstances were so urgent and severe, I would expect the landlord would proceed to make an urgent application in November 2019. Rather, the landlord issued a 1 Month Notice in late November 2019 which I find more in keeping with a dispute concerning smoking than an application for an early end of tenancy. I did not hear of any actions on part of the tenant after issuance of the 1 Month Notice, except his filing to dispute the 1 Month Notice. Accordingly, I find the circumstances before me are not so urgent and severe as to warrant an early end of tenancy under section 56 of the Act rather than wait to deal with the 1 Month Notice next week. Therefore, I deny the landlord's application.

For added certainty, I have only dismissed the landlord's Application for Dispute Resolution for an early end of tenancy under section 56 of the Act. The validity of the 1 Month Notice remains to be determined by way of the hearing scheduled for January 27, 2020.

Conclusion

The landlord's application for an early end of tenancy and Order of Possession under section 56 of the Act 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 21, 2020

Residential Tenancy Branch