



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

ET FFL (Landlord); CNC FFT LRE MNDCT (tenant)

Dispute Codes

Introduction

This hearing dealt with an expedited hearing for an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

At the commencement of the hearing, I advised the parties that the Rule 2.3 of the Residential Tenancy Rules of Procedure require that multiple applications contained in a single application for dispute resolution must be related.

The parties stated that the tenant's application to cancel the Notice is scheduled for hearing on January 27, 2019.

In this case, I found that the primary applications deal with an application for early end of the tenancy and the balance of the tenant's application is not related. Therefore, I

dismissed the balance of the tenant's application with leave to reapply. I have made no findings of fact or law with respect to the merits of those matters.

Issue(s) to be Decided

Is the landlord entitled to:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed the tenancy began on October 1, 2017 and is ongoing. Rent is presently \$1,120.00 and the tenant provided a security deposit of \$550.00 at the beginning of the tenancy which the landlord holds. The landlord submitted a copy of the tenancy agreement.

On November 9, 2019, the tenant informed the landlord he had just discovered a water leak in the unit. The landlord attended and found significant damage from a water leak which appeared to have been occurring for some time.. The landlord has undertaken repairs and plans to replace the hardwood flooring soon.

The landlord believes that the tenant deliberately concealed the water damage from her; as a result, she was not able to begin restoration and repairs in a timely manner which increased her expenses and projected costs.

The tenant denied that he delayed reporting the water damage or concealed anything. He stated that he notified the landlord as soon as he saw evidence of leaking.

The landlord testified that in the course of repairs, she came to believe that the tenant was rarely in the unit, as evidenced by few personal possessions, an empty refrigerator and lack of furniture. She observed many bicycles and bicycle repair tools. The landlord became convinced the tenant was operating a business out of the unit of storing and repairing bicycles; the landlord believed the tenant was living elsewhere. The landlord testified she is concerned that the tenant's absence from the unit will affect her insurance on the unit and her ability to re-mortgage in some months' time.

The tenant replied that he informed the landlord when he applied to rent the unit that he had living accommodation elsewhere and would primarily be using the unit during the

week to get to and from work. He stated that he owned all the bicycles in the unit as riding was his interest. He testified that he resided full time in the unit although he had been away for longer periods since the water damage incident because of the ongoing repairs.

Accordingly, the landlord issued the One Month Notice on November 27, 2019 which is not in the standard RTB form although the Notice references “attached... forms 33 and 34”. The first two-pages of the Notice, a copy of which was submitted, contained many reasons why the landlord wants to end the tenancy; for example, as stated, her insurance is potentially invalidated; the tenant failed to report silverfish; the tenant is operating a small business; the tenant constructed bins in the backyard without the landlord’s approval; the tenant stored items in the garage without permission; the tenant has been repeatedly late pay rent.

The landlord testified she assumed the tenant would be vacating the unit and acknowledged that she had already advertised for a new occupant at an increased rent.

The landlord has applied for an early end of tenancy and an Order of Possession. The tenant stated there is a hearing on January 27, 2019 to address the Notice and there is no reason why an order of possession should be issued in the meantime.

Analysis

Each party filed a considerable number of documents, including dozens of photographs, and provided lengthy testimony in a 75-minute hearing. While I have turned my mind to the documentary evidence and the testimony of the both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The standard of proof in a dispute resolution hearing is on a balance of probabilities which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end of notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section states:

Application for order ending tenancy early

56 (1) *A landlord may make an application for dispute resolution to request an order*

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and*
- (b) granting the landlord an order of possession in respect of the rental unit.*

For me to grant an order under section 56(1), I must be satisfied as follows:

56 (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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I accept that the landlord is frustrated because of the unexpected water leak and repairs.

However, in this case, I find that none of the situations referenced by the landlord (a fixed water leak suspected to be caused or concealed by the tenant, the resultant damages and repairs, the absence of many of the tenant's personal possessions in the unit, the questionable time spent by the tenant in the unit, the number of bicycles in the unit, and so on) of themselves give rise to any of the circumstances in section 52(2)(a). I do not find the landlord has met the burden of proof on a balance of probabilities for an order under section 56(1).

While the landlord undoubtedly has cause for concern about the condition of the unit, it does not follow that any conditions are met for the early termination of the tenancy under the Act. The landlord's testimony and supporting documentary evidence does not establish that it is unreasonable or unfair to the landlord to wait for the scheduled hearing.

As discussed, the landlord already issued a One Month Notice scheduled for hearing on January 27, 2020. In all the complaints listed by the landlord, the landlord did not provide a reasonable explanation as to why it would be unreasonable, or unfair to the landlord and other occupants of the building, to wait for this hearing.

Given the history between the parties, I find the landlord wanted to end the tenancy now and did not want to wait until the hearing, even though it is less than one month away.

The state of the rental unit (the water leak, the repairs and so on) and the time the tenant are in occupancy, are what led the landlord to issue the One Month Notice dated November 27, 2019. There is no evidence that the condition of the rental unit substantially changed or became more serious since then. As such, I am not inclined to find that the state of the rental unit gave rise to a reasonable circumstance where an early end of tenancy is warranted under section 56.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for an order under section 56 of the Act. As such, I dismiss the landlord's application without leave to reapply.

Conclusion

I dismiss the landlord's application without leave to reapply.

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 02, 2020

Residential Tenancy Branch