



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peninsula Estates Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was convened in response to an application by the Landlord for an early end of tenancy and an Order of Possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and all evidence (the “Materials”) by registered mail and by posting the Materials on the door on February 5, 2020 in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing and postal evidence indicates that the registered mail was not collected. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

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

Background and Evidence

The tenancy under written agreement started on November 15, 2019 on a month to month basis. Rent of \$1,524.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$762.00 as a security deposit.

The Tenant failed to pay rent for December 2019 and the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent. The Tenant did not pay the rent within the time allowed and did not dispute the 10-day notice. The Landlord made an

application for an order of possession through the direct request proceedings however the Landlord did not receive any materials from the Residential Tenancy Branch and discovered in February 2020 that the application was closed. The Tenant paid partial rent for January 2020 and no rent has been paid for February 2020.

On December 3, 2019 the Tenant, holding a bat, was in a fight with its guests in the cul de sac however the Landlord did not know of this incident until the police contacted the Landlord on January 13, 2020 to confirm that the Tenant resided at the dispute address. The Landlord states that a neighbour later informed the Landlord of witnessing this incident.

On February 5, 2019 two neighbours, one of whom is an employee of the Landlord witnessed another fight involving the Tenant and its guests in the carport. The Tenant was seen with a bat. It is unknown who called the police who subsequently attended the unit. The Landlord's employee took a video of the police being present with one person from the unit removed to an ambulance and the Tenant being arrested. The Landlord was unable to upload the video as evidence for this hearing. On February 6, 2020 the police again attended the unit. A staff member of the Landlord was present and informed the Landlord that the police appeared to be looking for the Tenant.

The Landlord states that the incidents were highly disturbing to other tenants but that these persons did not agree to provide any statements and that they informed the Landlord that they were too afraid to provide this evidence. The Landlord states that an inspection of the unit was carried out in December 2019 after the December 2019 incident due to a high amount of hydro usage at the unit. The Landlord states that the unit was found to be "okay". The Landlord confirms that it has no evidence of disturbance by the Tenant towards any other tenant and that it only has evidence of the other tenants being disturbed by the police presence. The Landlord confirms that it has no other evidence that the Tenant has caused any immediate and severe risk to anybody or anything.

Analysis

Section 56 of the Act provides that a landlord may make an application to end a tenancy earlier than it would end if the landlord issued a 1 Month Notice to End Tenancy for Cause and obtain an Order of Possession in certain circumstances. It is not necessary for the landlord to issue a 1 Month Notice; however, the landlord must show 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.

There is no evidence that any of the Landlord's property or other tenants faced an immediate and severe risk from the incident in December 2019. While it can be accepted that other tenants could be disturbed by the incident there is no evidence of unreasonable disturbance: The letter from another tenant only in relation to this incident sets out a belief of illegal activity from that incident and does not provide any evidence

of harm experienced by this tenant as a result of the incident. The Landlord's evidence is that an inspection of the unit after this incident did not show any damage to the unit. Further the Landlord has provided evidence that the incident was not known about until after the police informed the Landlord on January 13, 2020.

While it can be accepted that the incident in February 2020 may have also been disturbing to other tenants, there is no evidence of any interactions between the Tenant and the Landlord or other tenants during this incident or otherwise. There is no evidence of any damage to the unit as a result of the incident. For these reasons I find that the Landlord has not provided sufficient evidence of any significant interference, unreasonable disturbance, adverse affect, jeopardy or extraordinary damage to the property, the Landlord or other tenants and that the Landlord has not sufficiently substantiated that the Tenant is or has posed any immediate and severe risk to the Landlord, its property or other tenants. I further consider that given the lack of immediate and severe risk, the Landlord has not provided evidence that it would be unreasonable or unfair for the Landlord to wait for a notice to end tenancy for cause to take effect. I note that the Landlord could have acted on its right to obtain an order of possession on the basis of unpaid rent some time ago. The Landlord is therefore not entitled to an early end of tenancy and I dismiss the application.

Conclusion

The 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 Act.

Dated: February 21, 2020

Residential Tenancy Branch