



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

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; and authorization to recover the filing fee for this application, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 10:18 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing with her interpreter, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed that the landlord, her interpreter and I were the only ones who had called into this teleconference.

At the outset of the hearing, the landlord confirmed the proper spelling of her name. As the landlord had misspelt her name on her application, and as she was not opposed, the landlord's name was amended to reflect the proper spelling of her name.

The landlord testified that the tenants were served with the landlord's application for dispute resolution package and evidence on March 16, 2020, by way of posting the packages on the tenants' door. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenants deemed served with the landlord's Application and evidence on March 19, 2020, 3 days after posting. This matter was set on an expedited basis, and I find that the landlord has met the service requirements for this application. The tenants did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This 1 year, fixed-term tenancy began on November 1, 2019, with monthly rent set at \$1,000.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$500.00, which she still holds. Both the landlord and tenants reside in the same home in their own suites, with a shared laundry room which the tenants have access to on designated days of the week.

The landlord testified in this hearing that on February 23, 2020 around 9:00am, she as awoken by loud pounding on a door, as well as the sounds of a woman crying and screaming. The landlord called the police, who attended. The landlord testified that the female tenant was taken away from police, but returned around 5:00 p.m. The landlord testified that she was fearful when her tenant returned, and around 8:00 pm she was in the laundry room to replace the battery in the fire alarm. As it was laundry day for the tenants, the landlord testified that she waited for them to finish, and locked the door with a chain. The landlord testified that the female tenant noticed, and started shouting at the male tenant, and tried to kick down the door. The landlord testified that the female tenant was screaming and swearing. The landlord testified that she was so afraid that she was shaking.

The landlord testified that she immediately went upstairs and called the police after washing her face. The landlord testified that the police informed her that they had already spoken to the tenants, and told her to call again if any further incidents take place.

The landlord testified that several incidents took place, which caused her great concern. The landlord testified that the wooden gate to her garden was taken down by the tenants, and that she had discovered the fire alarms to be removed and on the floor.

The landlord testified that the next day she attended the RTB to obtain more information, and served the tenants with a warning letter about following the rules. On March 7, 2020, the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause.

The landlord testified that since she had served the tenants with the notice, the tenants have engaged in ongoing disturbing and threatening behaviour which include excessive noise from 1:00 a.m. to 4:00 a.m., pounding, shaking, loud music, drilling noises, and a

burning smell which the landlord believes to be electrical. The landlord testified that the last 10 days have been especially bad. The landlord testified that she is extremely fearful for her safety, and has been unable to sleep. The tenants have filed an application to dispute the 1 Month Notice, and a hearing is set for a future date. The landlord is fearful for her safety, and was informed by the police that the matter is before the RTB, and she must await the decision of an Arbitrator. The landlord testified that she has an autistic son, who is also affected. The landlord testified that she was only able to sleep 3 hours the night preceding the hearing.

Analysis

The landlord, in their application, requested an early termination of this tenancy on the grounds that the tenants have engaged in behaviour that has significantly disturbed the landlord, and caused her great fear for her personal safety.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, I need to be satisfied that the tenants have 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.

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord provided sworn testimony of the events that have caused her file her application.

Although the landlord had issued the tenants a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, the landlord has not applied for an Order of Possession pursuant to this 1 Month Notice. The landlord, in her application, is attempting to obtain an early end to tenancy as she believes the tenants' threatening and disturbing behaviour have escalated since she had tried to address the matter with the tenants, and even more after she had served them with the 1 Month Notice.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although the landlord issued a 1 Month Notice for Cause on March 7, 2020, the landlord did not make an application for an Order of Possession pursuant to that 1 Month Notice. Although the landlord provided sworn testimony about the tenants' behaviour, I find that the tenants have filed their own application disputing the 1 Month Notice, and a hearing date has been set to deal with that 1 Month Notice. I am not satisfied that the landlord has provided sufficient evidence to support that the behaviour of the tenants is significant or serious enough to justify the early end of this tenancy.

I find that the landlord's failure to pursue an Order of Possession pursuant to the 1 Month Notice issued on March 7, 2020 does not automatically qualify her to apply under section 56 of the *Act*. I find that the landlord failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

As the landlord was not unsuccessful in this application, I dismiss the landlord's application to obtain the recovery of his filing fee from the tenants.

Conclusion

I dismiss the landlord's application without leave to reapply. This tenancy continues 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: March 30, 2020

Residential Tenancy Branch