



Dispute Resolution Services

Page: 1

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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence. The tenant 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 tenant?

Background and Evidence

The tenant testified that she had first moved in on August 30, 2019 with her boyfriend at the time for this month-to-month tenancy. The tenant testified that rent was \$1,000.00 for the first month, and \$1,200.00 per month after that. The tenant testified that both parties were on the tenancy agreement, although her boyfriend moved out a few days into the tenancy. The tenant testified that no security deposit was collected by the landlord.

The landlord testified that no written tenancy agreement exists, and that only the tenant's boyfriend was to reside there for this tenancy. The landlord testified that this tenancy began on September 17, 2019, and they only discovered later that the boyfriend had moved out, and the tenant in this dispute remained. Both parties confirmed that KN currently resides there, and has been paying \$1,200.00 in monthly rent to the landlord.

The landlord served the tenant with a 2 Month Notice to End Tenancy on January 21, 2020. The tenant testified that she was unable to move out as her housing had fallen through do to the current circumstances surrounding the Covid-19 pandemic.

The landlord is seeking the early termination of this tenancy as she believes that the tenant poses a safety risk for the landlord, and other occupants. The landlord resides upstairs, with 2 rented suites below. The landlord called the other tenants as witnesses in this hearing.

The landlord testified that she can hear door slamming all night long, and has had to message the tenant at 4:00 a.m. The landlord testified that the other tenants are also disturbed by the tenant's behaviour. The landlord testified that the tenant is a "party girl" who smokes inside the house, even though this is prohibited. The landlord and other tenants testified in the hearing that the tenant would have random guests coming to visit her at all hours, and the landlord believes the tenant is an escort. The landlord provided images from the internet that contain photos of the tenant.

The landlord described an incident when she had heard screaming, and called the police. The police informed the landlord that the matter was a domestic dispute, and they were unable to do anything. The landlord testified that 2 days later, she heard screaming again, and the police were already in attendance. The landlord testified that the tenant informed her that her father was trying to kill her. The landlord submitted text messages that the tenant sent to her.

The other tenants testified in the hearing that a package was delivered to the tenant's doorstep, and the tenant had opened the package. The tenant JB believes that the tenant had intended to keep it. RB, another tenant, also testified that he felt the tenant to be unstable, and created an unsafe environment for everyone in the home. The landlord testified that she had trouble accessing the rental unit, even for repairs.

The landlord testified that she is concerned for the safety of her family and all occupants, and is requesting an Order of Possession.

The tenant disputes the landlord's claims, stating that although she has had a couple parties, she has not contravened any agreements or the *Act*. The tenant testified that she does not smoke, and that guests only smoke outside. The tenant testified that her ex-boyfriend had posted her photos on that website, and denies being an escort. The tenant also does not dispute that she has had friends visit her at the rental unit. The tenant testified that the landlord is upset that she is not moving out, and is attempting to end this tenancy by making false statements.

Analysis

The landlord, in her application, requested an Order of Possession on the grounds that the tenant and his guests have acted in a manner that has significantly interfered with or unreasonably disturbed the landlord and other occupants, as well as jeopardizing their safety. The landlord also suspects that the tenant has or is engaging in illegal activity.

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 called witnesses, as well as submitted in evidence, as well as other evidentiary materials such as text messages and webpages from the internet with images of the tenant.

Although the landlord testified to the issuance of a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*, the landlord has not applied for an Order of Possession pursuant to this 2 Month Notice or a 1 Month Notice to End Tenancy for Cause.

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 has issued a 2 Month Notice for Landlord's Use, the landlord has not issued a 1 Month Notice to End Tenancy for Cause, nor has she filed application for an Order of Possession pursuant to a Notice to End Tenancy. Although the landlord provided witness testimony about the tenant's behaviour, the tenant provided contradictory evidence that the landlord is seeking the end of this tenancy as she has failed to move out pursuant to the 2 Month Notice for Landlord's Use. In light of the contradictory evidence, I am not satisfied that the landlord provided sufficient evidence that the behaviour of the tenant or her guests have engaged in behaviour that is illegal, or significant or serious enough to justify the early end of this tenancy under section 56 of the *Act*.

I find that the landlord's failure to pursue an Order of Possession pursuant to a 1 Month Notice 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.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful, the landlord must bear the cost of this filing fee.

Conclusion

I dismiss the landlord's application in its entirety. 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: April 1, 2020

Residential Tenancy Branch