



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act; and

The landlord's son/agent (landlord) and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties each confirmed receipt of the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Has the landlord submitted sufficient evidence that this tenancy should end early and an Order of Possession be granted to the landlord?

Background and Evidence

There was no written tenancy agreement and the evidence was unclear as to when the tenancy began.

In support of their application, the landlord, who is listed as the owner's agent in the application, said that when he went to the property, he found out that their tenant was not living in the home. In his place appeared to be nine different people who apparently had sub-leased from the tenant without the landlord's knowledge or consent.

The landlord submitted that the tenant was making a profit, as he paid the monthly rent of \$1,900, while collecting double that amount from the various tenants.

The landlord said that the tenants in the residential property thought that the tenant was the landlord.

The landlord also submitted in a 2 page written statement that the property has been put at great fire and electrical risk, due to the garage being converted to a two-bedroom suite. The landlord submitted that the rental unit was an older home and the wiring and plumbing are "at their maximum potential and should not be tampered with".

The landlord submitted that he was informed that there was drug use and prostitution occurring on the residential property now.

Witness written statement -

The landlord had available a witness to testify; however, the landlord had submitted the witness' written statement, which the landlord confirmed would be his testimony.

As a result, I refer to the written statement in this Decision rather than the testimony, as the witness was not called so as not to have cumulative evidence.

The witness submitted that when he went to the property with the landlord, they noticed nine people living in the rental unit, who in turn were renting directly from the tenant, for a big profit.

The witness wrote that they noticed the garage was converted to a living area and the owner "expressed his concerns that the new living area does not meet the city code, fire code and or safety codes" and was done without the landlord's approval.

The witness wrote that one tenant reported drug and prostitution activity by another tenant.

The witness also wrote that the tenant has turned the residential property into a rental business and makes money by subletting.

Tenant's response -

The tenant confirmed he is no longer living in the rental unit, but that his furniture is there and being used.

The tenant said he did have the owner's permission to have others live in the residential property, but that the owner, who was not present for the hearing, only wanted to hear from one person.

The tenant said he pays all bills and keeps the house going and looking nice; however, he has not seen the owner in years.

The tenant submitted that the landlord here, the owner's son, called him to advise that the tenancy was to end by May 31, 2020, as he had plans to demolish the house for a new residence.

The tenant submitted that he told the landlord that he would try to accommodate that date, but would have to discuss with all the tenants if they could vacate by that date. The tenants were all unable to move-out by that date, due to the restrictions caused by the Covid-19 crisis.

The tenant submitted he was not aware of any potential risk to the property and the tenants do not have any health or safety concerns.

The tenant submitted that he has a long history with this rental unit, with various tenants moving in and out, all with the knowledge and consent of the owner. The tenant submitted that the owner only wanted one person to pay all rent and to handle all repairs. The tenant submitted that the owner had given him praise as to how well he managed all the tenancies.

The tenant submitted that he was long aware that the owner would someday demolish the rental unit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 56 of the Act is an extraordinary remedy which grants the Director authority to end a tenancy without a notice to end the tenancy if sufficient cause is established.

Section 56 (2) of the Act indicates that:

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.

The burden of proof is on the landlord to prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

In this case, I find the landlord submitted insufficient evidence to support their application.

The landlord expressed that the garage being converted to a living space created a fire and safety hazard. I, however, find his statements that there was a fire and safety hazard to be unsupported by actual evidence from an expert or anyone qualified to provide an assessment of a potential risk. I therefore find the landlord submitted insufficient evidence to prove that the tenant has put the landlord's property at significant risk or caused extraordinary damage to the residential property.

Overall, I find the landlord's evidence centered around his allegation that the tenant illegally sublet the rental unit, rather than a concern that there was a fire and safety risk.

The tenant submitted that he had the permission of the landlord/owner to have additional tenants and that this was a long-standing arrangement.

Additionally, as the landlord did not specifically deny that the tenant was informed the intention was to demolish the rental unit, I find this calls into question the motive of the landlord in this application.

I deny the landlord's application as I find that the landlord has not met the test required under section 56 (2) of the Act to end this tenancy early.

Due to the above, I find the landlord has not provided any compelling evidence or reasons to demonstrate that it would be unreasonable or unfair to the landlord to wait for a notice to end the tenancy under section 47 to take effect. As a result, I dismiss the landlord's application, without leave to reapply.

Conclusion

I have dismissed the landlord's application without leave to re-apply as I have determined that the landlord has not demonstrated that it would be unfair or unreasonable for the landlord to wait for a notice to end tenancy to take effect under sections 47 of 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: May 20, 2020

Residential Tenancy Branch