



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with 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.

The landlord and his spouse attended the hearing; however, the tenant did not attend.

The landlord stated he served the tenant with his application for dispute resolution, evidence, and Notice of Hearing by attaching it to the tenant's door May 7, 2020, at 9:20 p.m., and again in an email attachment on May 9, 2020. The landlord submitted that he sent the tenant a text message informing him the application and documents were attached to the door and the tenant responded acknowledging the service.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89 of the Act and the hearing proceeded in the tenant's absence.

The landlords were provided the opportunity to present their evidence orally 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

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

The landlords submitted a written tenancy agreement showing this tenancy began on May 1, 2019, monthly rent is \$1,000, due on the first day of the month and the tenant paid a security deposit of \$500.

The rental unit is in the basement of a home owned and occupied by the landlords and their two children on the upper level.

The landlord's evidence shows that they served the tenant with a One Month Notice to End Tenancy for Cause (Notice). A hearing took place on May 7, 2020, on the tenant's application in dispute of that Notice, which the tenant failed to attend.

While the landlord did not submit a copy of the Notice or the other arbitrator's Decision, as it was referred to by the landlord, I found it necessary to obtain a copy of both.

In a Decision dated May 7, 2020, by another arbitrator, the tenant's application was dismissed due to his failure to attend and the landlord was granted an order of possession of the rental unit under section 55 (1) of the Act, effective 2 days after service of the Order on the tenant.

That same day, the landlord filed this application under section 56 of the Act for an early end to the tenancy and an order of possession of the rental unit.

The Decision of May 7, 2020, issued by the other arbitrator, stated that the landlord served the tenant the Notice on February 25, 2020, and that it listed as cause that the tenant had significantly interfered with or unreasonably disturbed another occupant, or the landlord and that tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical well-being of another occupant.

The Decision of May 7, 2020, recounted there have been noisy arguments and regular, ongoing verbal and physical altercations in the rental unit between the tenant and his girlfriend. The arguments and fights disturbed the landlord and his family.

Other incidents included multiple disturbances of loud fighting, walls being hit, noisy comings and goings, and police coming to the rental unit, causing the landlord and his family stress and sleepless nights.

In the present hearing, the landlords said the disturbances have been ongoing for basically a year since the beginning of the tenancy. The landlords said that they feel like they are walking on eggshells and cannot enjoy their own home, due to the stress of the loud and continuous arguments.

The landlords said that the tenant has caused an unhealthy environment for their teenage daughters.

The landlord said that they have felt even less safe since the tenant sent them an email accusing them of entering the rental unit and smashing his phone.

The landlords' evidence appeared to be the same evidence used for the previous hearing on the tenant's application.

The landlords acknowledge that although they have an order of possession of the rental unit, they filed for this expedited hearing so that they could obtain an order of possession of the rental unit that would be enforceable in the current State of Emergency.

Analysis

Section 56 of the Act is an extraordinary remedy which grants the Director authority to end a tenancy without a notice of end tenancy if sufficient cause is established and the landlord demonstrates that it would be both unfair and unreasonable to allow the tenancy to continue until a one month Notice to End Tenancy under section 47 would take effect.

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

I find that all the stated reasons for an early end to the tenancy brought forward by the landlord were addressed by the landlord's issuance of the Notice of February 25, 2020, under section 47 of the Act, served on the tenant on February 25, 2020. Therefore, the landlord has failed the second part of the test for ending the tenancy early.

Additionally, Residential Tenancy Branch (RTB) Policy Guideline provides guidance for expedited hearings and the evidence that must be submitted to support it. Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or guest pepper spraying a landlord or caretaker.

Example of evidence that can be provided include the following:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant

I was also influenced by the landlord's confirmation that they filed this application as the order of possession they received on May 7, 2020, is currently unenforceable due to the *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020.

I also considered and was influenced by the evidence showing that the alleged disturbing activities have been ongoing since nearly the beginning of the tenancy, or June 2019, which I find shows the lack of an urgent nature of the activity as claimed by the landlord.

I therefore find the landlord has provided insufficient evidence to support his application seeking 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.

As a result, I dismiss the landlord's application, without leave to reapply.

Conclusion

The landlord's application was dismissed due to insufficient evidence.

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 22, 2020

Residential Tenancy Branch