



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.

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

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on May 1, 2020, with monthly rent set at \$900.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$450.00, which the landlord still holds.

The landlord is seeking an early end to this tenancy. The landlord testified that the tenant has engaged in threatening and disturbing behaviour towards her, her partner, her guests, as well as her other tenant and tenant's children. The landlord testified that the tenant has been involved in several incidents that have resulted in the attendance of police. The landlord testified that charges are still pending. The landlord described several incidents that involve damage to her personal property including her car, window, and door. The landlord submitted photos of the damaged property. The landlord testified that the tenant has also threatened her, which has included threats of using the tenant's affiliations with bike gangs. The landlord submitted a text message and photo of insecticide that states "I bought some pest killer..I'll maybe spray it on you so you can cease to desist". The landlord included several witness statements, as well as postings on a social media page about the landlord, which the landlord testified included false accusations. The landlord testified that the tenant's behaviour has affected her health, and the landlord is now on medication.

In addition to the threats and damage, the landlord testified that the tenant has caused a disturbance by tampering with the utilities such as the wifi and calling the internet provider. The landlord testified that the tenant also smokes on the property despite the fact that it is strictly a non-smoking tenancy. The landlord admitted to entering the tenant's rental unit on one occasion only, which was done in order to retrieve her keys.

The tenant disputes damaging any of the landlord's property, or threatening the landlord. The tenant called a witness in the hearing who testified that he had known the tenant for approximately 6 years, and he has known her to be a calm person. The tenant did not dispute that the relationship between her and the landlord was strained, but that was due to the fact that the landlord has provoked her despite the fact that she is bipolar, and suffers from anxiety and obsessive compulsive disorder. The tenant testified that the landlord has entered her rental unit on several occasions without her permission. The tenant admitted to smoking, but this was in an effort to avoid seeing the landlord.

Analysis

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 witness statements, photographs, and other documentary evidence such as text messages and social media posts to support her claim.

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 for the landlord to wait until an application to end the tenancy for cause was considered. In this case, I find that the landlord has not issued the tenant any 1 Month Notices to End Tenancy for Cause. As this tenancy did not begin until May 1, 2020, and as there is a Ministerial Order in effect that prohibits the landlord from issuing a Notice to End Tenancy under section 47 of the *Act*, I must consider whether the landlord has satisfied the requirements for the end of a tenancy under section 56 of the *Act*. 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 provided personal and witness statements about the tenant's behaviour, the tenant provided contradictory evidence that the landlord had initiated or contributed to the disputes that took place. I find that the landlord had entered the tenant's rental unit in contravention of section 29 of the *Act*, which prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. This entry is also in contravention of the Ministerial Order dated March 30, 2020.

The Ministerial Order dated March 30, 2020 sets the following restrictions on the landlord's right to entry:

Landlord's right to enter rental unit – *Residential Tenancy Act*

8 (1) Despite section 29 (1) (b) of the *Residential Tenancy Act* and sections 11 (2) (a) and (3) of the Schedule to the *Residential Tenancy Regulation*, a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.

(2) If a landlord gave written notice under section 29 (1) (b) of the *Residential Tenancy Act* before the date of this order, and the date for entering the rental unit given in the notice increase is after the date of this order, that notice is null and void.

(3) Despite any section of the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy agreement if the following applies:

- (a) an emergency in relation to the COVID-19 pandemic exists, and
- (b) the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public.

Although the landlord provided evidence of damage to her property, I am not satisfied that the landlord provided sufficient evidence to support that the damage was caused by the tenant.

In light of the evidence before me, I am not satisfied that the landlord provided sufficient evidence to support that the behaviour of the tenant is significant or serious enough to justify the early end of this tenancy under section 56 of the *Act*. 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 in this application, the landlord must bear the cost of this filing fee. The landlord's application for recovery of the filing fee is dismissed without leave to reapply.

Conclusion

I dismiss the landlord's entire 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: June 5, 2020

Residential Tenancy Branch