



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 their filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by its agent (the "landlord").

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's application. The parties confirmed no documentary evidence was provided. Based on the testimonies I find the tenant was served with the landlord's application pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end to this 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 parties agree that this tenancy began sometime in or about 2017. The rental suite is located in a building with other residential and commercial occupants.

The landlord testified that they believe the tenant is involved in criminal activity, manufacturing and distribution of controlled substances. The personal landlord, their agent and witness all testified that they have witnessed regular foot traffic going to and from the rental unit, behaviour that they say is consistent with the sale of drugs. The parties agree that there was an incident where police were called to attend at the rental unit. The landlord says that they were informed by the police that illegal activities are occurring in the rental unit. The tenant submits that while police were called no charges were laid.

The landlord submits that they have received complaints from neighbors regarding the volume and nature of the traffic to the rental unit. The landlord also testified that the rental unit is in a state of disrepair and falls below the municipal standards. The landlord called a municipal bylaw officer as a witness and they testified that they have issued warnings regarding the property. The witness also testified that they have communicated with the police and are aware that there is ongoing criminal activity in the rental unit.

The landlord said that they are at risk of having the rental property surrendered to civil forfeiture if they allow the tenant to continue to reside in the unit. The landlord's witness confirmed that the landlord may be subject to daily fines of \$500.00 if they are unable to prevent criminal activities from occurring in the rental unit.

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 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has 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.

I have considered the totality of the evidence presented by both parties. Based on the submissions I find, on a balance of probabilities, that the landlord has not met their evidentiary burden to demonstrate that the tenant's conduct has given rise to a basis for this tenancy to end.

While the landlord, their agent and their witness provided cogent and consistent testimony, I find that in the absence of any documentary evidence in support their oral testimony is insufficient to meet the evidentiary onus. The landlord did not provide an explanation as to why they chose not to submit any documentary evidence in support of their application. If there are complaints about the tenant's behaviour it would be reasonable to expect some correspondence would exist. If the municipality or police authorities have taken some steps or have informed the landlord of their findings it would be reasonable to expect that there would be something in writing setting out their findings. I do not find the anecdotal and hearsay evidence of the landlord to be sufficient to determine that the tenant has engaged in actions that warrant an end of this tenancy.

I do not find the hearsay evidence of the landlord, their agent and witness to be sufficient to determine that the tenant has engaged in illegal activity. The landlord's evidence that the police attended at the rental unit is of little probative value as anyone may make a complaint and have the police attend. The testimony that the landlord has witnessed a series of individuals going to and from the rental unit is not sufficient to determine that there is illegal activity. Even if I were to accept the landlord's position

that the tenant is engaged in illegal activity, there is little evidence that the activity is one that the series of visitors pose a risk to security or safety or that their conduct is such that it has adversely affected the quiet enjoyment of others.

Based on the totality of the evidence I am not satisfied that the tenant has engaged in any conduct that would give rise to a reason for ending the tenancy. Additionally, while I accept that the landlord has concerns about being subjected to fines and civil forfeiture, I find that the landlord has provided insufficient evidence that these concerns have merit or that it would be unreasonable or unfair to wait until a notice to end tenancy pursuant to section 47 of the Act could take effect.

Accordingly, I dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

The landlord's application is dismissed 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 26, 2020

Residential Tenancy Branch