



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 a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

The landlord was represented by legal counsel and her agent who is also the landowner where the rental unit is located. The agent is referred to by initials DH in this decision. There was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing documents upon the tenant.

DH testified that she personally posted the proceeding package, including the written submission and evidence, to the door of the rental unit on June 12, 2020. The landlord's legal counsel submitted that the proceeding package was also sent to the tenant via registered mail on June 12, 2020. I was provided a registered mail tracking number (recorded on the cover page of this decision) as proof of service and a search of the tracking number shows that the registered mail was delivered to a community mailbox on June 17, 2020. DH testified that although there are multiple occupants on the property who share the community mailbox, the tenant has his own key for the community mailbox and the tenant ordinarily retrieves his mail from the community mailbox.

I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord's agent and legal counsel without the tenant present.

Issue(s) to be Decided

1. Has the landlord established a basis for ending the tenancy early and obtaining an Order of Possession under section 56 of the Act?
2. Award of the filing fee.

Background and Evidence

The rental unit is a manufactured home owned by the landlord (DH's step-mother) and located on a 4 acre parcel of land co-owned by DH, DH's husband and DH's son. The tenant and his son reside in the rental unit; DH's step-mother resides in a cottage on the same property; and, DH, her husband, her son also reside on the property.

Under an oral agreement, the tenant was given exclusive possession of the rental unit in approximately 2002. At that time, the land was owned by DH's father. In 2005, DH's father died and DH inherited the land and the manufactured home owned by DH's step-mother remained on the property and continued to be occupied by the tenant. DH understands that the tenant was supposed to pay monthly rent of \$300.00 to the landlord but that payments have only been sporadic.

The landlord seeks to end the subject tenancy because the tenant has put the property and the health and safety of the landlord and other occupants of the property at significant risk. I heard that the tenant has accumulated a significant amount of garbage and debris on the property which has blocked ingress and egress to the property by emergency services and other occupants, and that accumulated debris has created trip and fire hazards. The accumulated garbage and debris include a large illegal fire pit, piles lumber and wood, tires, cars and car parts, appliances, barbed wire and the like. In addition, the tenant has constructed two poorly constructed additions to the manufactured home that are in danger of collapsing or crumbling and/or catching fire especially considering there is an uncertified wood stove in the addition and suspect electrical connections.

The property owners have been under pressure from the bylaw officers and the police to clean up the property over basic health and safety concerns. In November 2019 the City issued a stop-work order was issued to the property owners with respect to the additions to the manufactured home. In December 2019, a demolition permit for demolition of the manufactured home additions was applied for and obtained by the property owners. According to DH, the landlord intends to demolish the entire

manufactured home after the tenant vacates as the walls of the manufactured home are also heavily damaged.

Also in December 2019, the landlord served the tenant with a *Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit* ("4 Month Notice"). The tenant did not file to dispute the 4 Month Notice and did not vacate the rental unit. The landlord's legal counsel requested an Order of Possession based upon the undisputed 4 Month Notice in the event the request for an Order of Possession under section 56 of the Act was unsuccessful. I informed the landlord's agent and legal counsel that this proceeding was set to deal with an application made under section 56 of the Act other matters may not be added to an expedited hearing such as this. Accordingly, it was not before me to determine the validity or enforceability of the 4 Month Notice or entitlement to an Order of Possession based on the 4 Month Notice.

The landlord's legal counsel submitted that the landlord expected the tenant to vacate the property in accordance with the 4 Month Notice but then Ministerial Order No. 89 came into effect due to the COVID-19 pandemic on March 30, 2020 and the landlord was precluded from serving the tenant with a 1 Month Notice to End Tenancy for Cause.

Aside from the condition of the manufactured home and surrounding land, I also heard that there have been numerous attendances to the rental unit by the police in response to disturbances, including a recent attendance on June 25, 2020 in response to an allegation of assault upon a neighbour by the tenant's son.

The landlord's legal counsel acknowledged that the garbage and debris has accumulated over time; however, there is an immediate and imminent threat to the landlord, other occupants of the property and the property itself due to the serious risk of fire, flood, collapse of the additions, and/or trip and fall hazards that may occur at any moment given the current condition of the manufactured home and surrounding land and the passage of time has not diminished that risk.

Evidence for this proceeding included: several photographs of the exterior of the rental unit, including the additions and surrounding land; the stop work order; the demolition application and demolition permit; and, the 4 Month Notice.

Analysis

Section 2 of the Act provides that the Act applies to landlords and tenants with respect to rental units, residential property and tenancy agreements. In this case, the respondent was provided possession of a manufactured home under an oral agreement. The manufactured home is owned by the landlord. It is not entirely clear whether a set amount of rent was agreed upon and the parties may have a licence to occupy. However, it is unnecessary for me to be satisfied there is a requirement to pay rent, or whether there is a licence to occupy as section 1 of the Act provides an inclusive definition of “tenancy agreement”. Tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Therefore, I find I am satisfied the Act applies to the agreement between the applicant and the respondent with respect to the respondent’s occupation of the manufactured home.

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a *1 Month Notice to End Tenancy for Cause* (“1 Month Notice”) and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect. In making an application under section 56 of the Act, a landlord is not required to serve a 1 Month Notice.

Below I have reproduced section 56 of the Act:

- 56** (1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.
- (2) 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 landlord's burden to prove entitlement to an Order of Possession under section 56 of the Act is high as section 56 is intended to apply in the most serious of circumstances.

Upon consideration of all of the unopposed evidence before me, including the photographs, testimony of DH, and the submissions and arguments of the landlord's legal counsel, I accept that the tenant has constructed two poorly constructed additions to the manufactured home and those additions pose a health and safety hazard, not only by way of the poor construction techniques but the installation of unauthorized wood burning appliance and electrical connections. I further find there has been a significant accumulation of garbage and debris on the land surrounding the rental unit and that accumulation is impeding ingress and egress to the property and creating

serious and significant hazards including fire hazard and tripping hazards. Given the current condition of the manufactured home and the surrounding land at the hands of the tenant or persons permitted on the property by the tenant, I find the rental unit has been significantly damaged or at serious risk of being damaged; and, the health and safety of the landlord and the other occupants of the property are at significant risk. Given the seriousness and severity of the circumstance, I find it is necessary to order the end of this tenancy as soon as possible and that it would be unreasonable to wait for a 1 Month Notice to take effect.

In keeping with the above, I order the tenancy ends and the tenant is required to vacate the rental unit two (2) days after the Order of Possession is served upon the tenant. The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

Since the landlord was successful in this application, I award the landlord recovery of the \$100.00 filing fee.

Conclusion

Under section 56 of the Act, I order the tenancy is ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant under section 56 of the Act.

The landlord is awarded recovery of the filing fee and I provide the landlord a Monetary Order in the amount of \$100.00 to serve and enforce upon the tenant.

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: July 07, 2020

Residential Tenancy Branch