



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on June 16, 2020 (the "Application"). The Landlord applied for an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the "Act") and to recover the filing fee.

The Landlord was represented at the hearing by W.L. and W.M. who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord W.M. testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on June 18, 2020. A Canada Post receipts was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find that these documents are deemed to have been received by the Tenant on June 23, 2020. The Tenant did not submit documentary evidence in response to the Application.

The Landlord's agents were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms the fixed-term tenancy began on October 1, 2019 and was expected to continue to September 30, 2020. Rent in the amount of \$2,500.00 per month is due on or before the first day of each month. The Tenant paid a security deposit in the amount of \$1,250.00 and a pet damage deposit in the amount of \$1,250.00, which the Landlord holds.

The Landlord wishes to end the tenancy. On behalf of the Landlord, W.M. testified that the Tenant and her roommate had a disagreement and that the roommate moved out at the end of October 2019. W.M. gave the Tenant a warning by telephone and subsequently sent a written caution letter to the Tenant on January 17, 2020. A copy of the letter was not submitted into evidence.

W.M. also testified that two new roommates and the Tenant's boyfriend moved into the rental unit in February 2020. However, the roommates moved out in April and May 2020, respectively. W.M. testified that the roommates advised that they felt unsafe due in part to drug activity in the rental unit.

In addition, W.M. testified that the Tenant and her boyfriend had several loud fights in the rental unit, disturbing the tenant in the lower unit and at least one neighbour. W.M. testified the R.C.M.P. have attended on several occasions and that the tenant in the lower unit has threatened to leave. However, the tenant in the lower unit did not attend the hearing to provide testimony and did not provide a written statement.

W.M. also expressed concern for students at a local elementary school and testified that the Tenant has not paid rent for several months.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the documentary evidence and affirmed oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy 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*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

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...

- (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.*

[Reproduced as written.]

In this case, I find there is insufficient evidence before me to grant the relief sought. I find that the noise complaints, which form a significant part of the reasons for wishing to end the tenancy, do not rise to the level required for an early end to the tenancy and are most appropriately dealt with in a notice to end tenancy for cause. In addition, the lack of supporting evidence of threats to the lower tenant, or of the lower tenant's threat to leave, is a reason the Landlord's request is being denied. Further, the Landlord's concern for the well-being of students at a local school, the relationship between the Tenant and her roommates that moved out, and the complaints of neighbours are not concerns that are captured under the *Act*. Accordingly, I find that the Landlord's Application is dismissed without leave to reapply. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

The Application is dismissed without leave to reapply. The tenancy will continue until otherwise 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: July 7, 2020

Residential Tenancy Branch