



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 landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An early end of the tenancy and Order of Possession pursuant to section 56; and
- Authorization to recover their filing fees from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended, assisted by their family member and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with the notice of hearing and evidence by posting on the rental unit door on June 15, 2020. The landlord submitted into evidence two signed Proof of Service forms as evidence of service. Based on the evidence I find that each of the tenants is deemed served with the landlord's materials on June 18, 2020, three days after posting, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an early end of tenancy and Order of Possession?
Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

The landlord provided the following testimony. This periodic tenancy began on February 1, 2019. The monthly rent is \$3,500.00 payable on the first of each month. A security deposit of \$1,550.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is the main floor of a detached home with two suites. The basement suite is occupied by an unrelated occupant.

The landlord writes in their written submissions that this tenancy began on April 1, 2019. The copy of the signed tenancy agreement submitted into evidence provides that the tenancy begins on March 1, 2019 with a monthly rent of \$3,500.00 and security and pet damage deposit payable of \$3,500.00 each. The landlord provided no explanation for the discrepancies between their testimony and the written materials.

In their written submissions the landlord says that the “tenants have been disappeared since more than a month ago and have not paid their rent and utility bills”. Elsewhere in their submissions the landlord writes:

Tenants unlawfully have taken control of the main floor of the home and are significantly disturbing another resident. They are taking advantage of the COVID situation by making money from rotating people. They do not care for us (their behavior endangered my health so I developed a very serious heart problem), the property, and the other resident and his family who are scared and disrupted. They have also threatened their security, safety, and physical well being.

The landlord includes in their materials a letter from the other occupant of the building who complains of garbage bags on the rental property, periodic smell of marijuana and visitors to the rental property. The landlord also includes a note from their doctor stating that they have “developed health problem after disagreement with his tenant”.

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 find that the landlord has provided insufficient evidence to show that there is a basis for this tenancy to end and little evidence that it would be unreasonable or unfair to wait for a notice under section 47 to take effect.

The bulk of the evidence submitted by the landlord pertains to complaints about non-payment of rent and utilities. The landlord has provided little material evidence demonstrating that there is a rental arrear. Much of the evidence simply consists of complaints and allegations that no rent has been paid. The landlord's other complaints include trivial issues such as the tenants' failure to landscape the property or water the lawn. It is evident based on the materials submitted that the primary concern of the landlord is the non-payment by the tenants.

The landlord suggests in their submissions that the tenants have disappeared and that unknown individuals are found on or about the property. There is little evidence that these individuals have been allowed onto the property by the tenants or have any relation to them. The landlord's evidence consists of conjecture and supposition with little evidentiary or logical basis.

While the witness statement from another occupant of the building makes some reference to disturbances there is little evidence that the cause of the disturbance is the tenant. The witness makes a colossal leap in concluding that "tenant is taking advantage of the "Covid" situation by making money from rotating people through the house as a short-term rental". I find the use of quotation marks, questioning the existence of the ongoing Covid19 pandemic to demonstrate the limited credibility of the witness. It is unknown based on the submission how the witness or the landlord believe that during an ongoing pandemic where the public health recommendations are to maintain social distance, that the tenant is able to exploit the circumstances. I find the landlord's belief to be baseless, nonsensical and of little value.

I do not find the landlord's submission of a doctor's note to be evidence that there has been any unreasonable disturbance by the tenant. The note merely states that the landlord developed "health problem" without detailing the nature of the issues. The note does not identify the specific tenant with whom the landlord had a disagreement, nor does it provide information on causality. It is unreasonable for a landlord, or any individual, to expect that others accede to their desires and avoid disagreements lest they cause "health problems". I find this note to be of little probative value and demonstrates the landlords unreasonable belief that others should accede to their wishes due to their own inability to deal with disagreements.

Based on the totality of the evidence submitted I find, on a balance of probabilities that the landlords have not shown that the tenants' actions or negligence has given rise to a reason for this tenancy to end. I find that the landlords' complaints about the tenant to fall far short of a basis for an early end of the tenancy and the application is accordingly dismissed in its entirety.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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