



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 for Dispute Resolution seeking to end a tenancy early and without notice.

The hearing was conducted via teleconference and was attended by the landlord; her witness; and the tenant.

The landlord testified the tenant was served with the notice of hearing documents; this Application for Dispute Resolution; and all of her evidence, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on June 30, 2020, in accordance with Section 89.

The tenant acknowledged receiving the landlord's documents on July 6, 2020. The tenant also testified that he had not served any evidence to the landlord.

I am satisfied the tenant has received the landlord's evidence and documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early and without notice and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 56, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began as a one-year fixed term tenancy on December 22, 2017 for a monthly rent of \$2,600.00, due on the first of each month with a security deposit of \$1,300.00 and a pet damage deposit of \$1,300.00 paid. The tenancy converted to a month to month tenancy on January 1, 2019.

The landlord submitted that a number of issues of concern have been ongoing from the beginning of the tenancy including issues related to the tenant's dogs. The landlord testified that while she originally thought the tenant would only have one dog she found out after the tenancy began that he, in fact, had two dogs. The issues relating to the dogs include feces in the yard; damage to house and property; barking; and biting of the other occupant on the property and his guests.

In addition, the landlord testified that the other occupant on the property has complained about noise and disturbances throughout late night and early mornings. This includes disturbances at any time between 2:00 and 8:00 a.m. on occasion.

The landlord also submitted that the tenant was responsible for garbage being strewn around the yard that included hypodermic syringes and for significant damage resulting from a flood during the installation of a new hot water tank.

The landlord and her witness provided testimony on each of these issues. The landlord has submitted several text messages; photographs; and videos into documentary evidence. Most of the items are not date stamped but some of the ones that are, date from 2018 and 2019. In addition, the landlord has submitted a written submission as well as one from her witness who attended the hearing and provided testimony.

The landlord submitted the problems began shortly after the tenant moved into the rental unit with one of his dogs barking and biting the other occupant and his guests. The landlord testified that it got so bad that she issued a notice to end tenancy in the summer of 2019 but that she later cancelled the notice after she discussed the situation with the tenant.

I note the landlord had issued a Two Month Notice to End Tenancy for Landlord's Use of Property and not a One Month Notice to End Tenancy for Cause. The landlord testified that she felt this would be a better way to end the tenancy. The landlord

submitted that as a result of the Notice the tenant agreed to remove the second dog and so she cancelled the Notice.

The landlord submitted that the impact of the issues has intensified since the Covid 19 State of Emergency has been declared and seeks to end the tenancy as a result of the issues identified above under Section 56 of the *Act* since she was not allowed to issue any notices to end tenancy during the original State of Emergency. The landlord submits that the tenant's actions are disturbing the mental health of the occupant living in the basement unit.

The most recent incident the landlord is concerned about is that she had advised the tenant that she was having a hot water tank replaced and that the water would be turned off at the main until the next morning. The landlord submitted that, despite this warning the tenant turned the main on and filled the tank which resulted in the water running under the wood floors in the basement, requiring the basement occupant to drain the tank by buckets.

The tenant submits that he had not been made aware of any ongoing issues that could result in the ending of his tenancy. He repeated, several times, that there was no way he could fix any problems if he was not aware of them.

The tenant acknowledges receiving text messages from the occupant of the basement suite – the landlord's witness – regarding some noise complaints. He indicates that he has been responsive but some of the times that he has received complaints from the other occupant were on days he was getting ready for work or on one occasion, in particular, he was away but a friend was staying in his place which is why he did not respond.

The tenant submitted that he had not been made aware of any dog issue until after he had received the Notice to End Tenancy in 2019 and after he rehomed his dog, he had not heard any other issues arise regarding dog barking or biting. He acknowledged that from time to time when he is out of town the dog waste does build up and he cleans it up when he gets home.

The tenant submitted, in response to the issues related to the hot water tank, that he had checked with the plumber who stated it would be ok to turn on the water main, despite the direction from the landlord to not do so.

Analysis

Section 56(1) of the *Act* allows a landlord to make an application for dispute resolution to request an order 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]. Section 56(2) goes on to say that:

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.

I also note that effective on March 30, 2020 the Solicitor General issued Ministerial Order M089 suspending the ability for landlords to end tenancies for any reason during the State of Emergency due to Covid 19. Further, on June 24, 2020 the Solicitor General issued a new Ministerial Order M195 rescinding the previous restrictions

against issuance of notices to end tenancies for most reasons except the non-payment of rent. As such, I note that for the period between March 30, 2020 and June 24, 2020 landlords could not issue a Notice to End Tenancy for Cause.

From the testimony of both parties and the documentary evidence of the landlord, I find that the landlord can establish that there have been issues during the tenancy that may be sufficient cause to end the tenancy.

Despite the assertion of the tenant, there is no requirement under the *Act* that a landlord must inform a tenant prior to seeking an end to the tenancy of any issues related to the tenancy. However, I am convinced by the tenant's submissions that if a tenant is not made aware of an issue it cannot reasonably be expected the tenant can deal with it.

Having said that, I also find that a responsible pet owner should be sufficiently aware of the impact of their dog or dogs have on other occupants of the property and on the property itself. For example, it should come as no surprise to the tenant that his dogs (either past or present) have caused chewing damage to the property.

I find the landlord has provided evidence showing the yard (fences and landscaping ties) and stairs inside the property showing the condition before the tenancy began and after the tenant's dogs have caused damage to it. I find this evidence establishes sufficiently a contributory cause for the landlord to end the tenancy.

In addition, I note the tenant testified that he acknowledged that there was a build up of dog feces in the yard when he was away. As such, and despite the evidence that she did, I find there was no need for the landlord to inform him of this issue as he was already aware of it.

Furthermore, I find the testimony of both parties confirms that the tenant was aware that he and, in some cases, his guests have caused disturbances to the other occupant on the residential property and that the tenant was aware of these disturbances, if only as a result of complaints from the occupant of the basement suite.

Based on the totality of the causes above, I find the landlord has established sufficient cause to end the tenancy. However, I find the landlord has failed to establish that it would be unreasonable to wait for a One Month Notice to End Tenancy for Cause to take effect. While the landlord cites that the tenant's actions have had a greater impact on the other occupant's mental health during the State of Emergency, she has provided no documentary evidence of any impact to the occupant's mental health.

Furthermore, in regard to many of the allegations of the landlord the documentary evidence is based on texts from 2018 and 2019, inferring that these issues have been ongoing and not emergent or any more significant at the time the landlord applied for the order of possession on June 28, 2020.

In relation to the event in June 2020 regarding the hot water tank replacement and flood, I accept that this issue is more recent than the other issues noted of concern to the landlord. However, I find that this one event is not likely to recur and as such, it is not unreasonable to wait for a One Month Notice to take effect.

In addition, while the landlord submitted that despite the intensification of the issues during the State of Emergency, she could not issue a notice to end tenancy, I note that the requirements to end a tenancy under Section 56 without notice to the tenant were not relaxed during the State of Emergency. That is to say, the landlord cannot use the provisions under Section 56 of the *Act* to circumvent the Ministerial Orders noted above.

Furthermore, I also note that Ministerial Order 195 was issued on June 24, 2020 allowing landlords the opportunity to issue notices to end tenancy after that date for any of the allowable reasons under the *Act*, except for the non-payment of rent. As such, when the landlord submitted her Application for Dispute Resolution on June 28, 2020, she could have issued a One Month Notice to End Tenancy for Cause.

Conclusion

As the landlord has failed to establish both parts of the requirements outlined in Section 56 of the *Act* to end the tenancy early and without notice, I dismiss her Application for Dispute Resolution 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 27, 2020

Residential Tenancy Branch