



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution, seeking an order to end the tenancy early and to receive an order of possession.

The landlord attended the teleconference hearing. The landlord was provided the opportunity to provide affirmed testimony and were provided the opportunity to present evidence submitted in accordance with the rules of procedure and makes submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated August 11, 2020 (Notice of Hearing) was considered. After providing the landlord time to locate their evidence, the landlord testified that the tenant was personally served at the rental unit on August 13, 2020 at around 8:00 p.m. The landlord did not provide any evidence that there was a witness present. The landlord testified that the Notice of Hearing and application were served and confirmed that the landlord has served no documentary evidence. Without evidence to prove to the contrary, I accept the tenant was duly served with the Notice of Hearing and the landlord's evidence in accordance with the Act.

Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession?

Background and Evidence

The landlord did not supply a copy of the tenant agreement. The landlord testified that a fixed-term tenancy began on August 1, 2019 and reverted to a month to month tenancy after August 1, 2020.

The landlord writes in their application the reason why they are seeking an early end to the tenancy for health or safety reasons:

On may 21 after suspicious activity in the basement suite police found dead homeless stranger apparently friend of the tenant boyfriend who move in and visit her an bring some very suspicious people dead person was laying on the floor after a party (drinking drogs (sic)) Upstairs tenants and neighbors are filling (sic) with this individuals leaving (sic) in the basement

During the hearing, the landlord confirmed that they have not spoken to the police or the coroner and although they claim to have photos, submitted no documentary evidence for my consideration. The landlord testified that they did not submit any documentary evidence because they did not know how; however, I note that the instructions for uploaded evidence are on the documents provided to the landlord and the landlord had an entire month to contact the RTB prior to the hearing to seek assistance with uploading evidence and failed to do so.

Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the Act indicates:

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.

[Emphasis added]

The burden of proof is on the landlord to prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect. The landlord did not provide evidence that a 1

Month Notice to End Tenancy for Cause (1 Month Notice) has been served on the tenant.

Firstly, this event occurred in May 2020 and given that the landlord waited over two months before filing this application, I find the landlord has failed to meet the high burden of proof to support this application under section 56 of the Act. In fact, I would have expected that at the very least, the landlord would have issued a 1 Month Notice, which was not presented at the hearing. In addition, I would have expected the landlord to have applied in May 2020 if this matter was urgent, which the landlord failed to do.

In addition, I have no witness testimony before me, and the landlord admitted that they have not spoken to police or the coroner to verify the information they are affirming as fact during the hearing. Furthermore, the landlord has no witness statements or other documents to support this application. As a result of the above, I find that the landlord has failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the Act. The landlord may wish to serve a 1 Month Notice under the Act as a result. Consequently, **I dismiss** the landlords' application due to insufficient evidence.

The filing fee is not granted as this application has been dismissed.

Conclusion

The landlord's application fails and is dismissed due to insufficient evidence. The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to the parties at the email addresses confirmed by the landlord during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 4, 2020

Residential Tenancy Branch