



Dispute Resolution Services

Page: 1

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 to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord ST attended the hearing and both were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served with the landlords' application for dispute resolution package and evidence on August 12, 2020 by way of posting the package on the tenant's door. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with the landlords' Application and evidence on August 15, 2020, 3 days after posting. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the landlords entitled to an early end of tenancy and an Order of Possession?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

The landlord provided the following submissions. Both parties entered into a month-to-month tenancy agreement on July 4, 2020. The landlord provided a copy of the written tenancy agreement. The tenants moved in on July 12, 2020. Monthly rent was set at \$2,800.00, payable on the first of the month. The landlord testified that the tenants provided three cheques: a \$2,800.00 rent cheque for July 2020, a cheque in the amount of \$1,400.00 for the security deposit, and \$200.00 deposit for two key FOBs. The landlord testified that all three cheques were deposited on July 5, 2020, and were returned on July 8, 2020. The landlord testified that the tenant has not made any payments since.

The landlord testified that they had called the police, who attended and talked to the tenant. The tenant became very angry, and responded in a threatening manner towards the landlords. The landlords then issued a notice of inspection for August 3, 2020, on July 29, 2020, which was posted on the tenant's door. The landlords attempted to access the rental unit on August, 3, 2020, and was denied access by the tenant. The landlord testified that they believed the tenant was home, but did not give the landlord access. The landlord testified that they attempted to enter but discovered that the tenant had changed the locks without informing the landlords, or providing them with a key.

The landlord testified that the tenant was very noisy, and may be engaged in illegal activity. The landlord testified that they have received complaints about the tenants smoking marijuana, and making excessive noise. The landlord testified that they have served the tenant with a 1 Month Notice to End Tenancy for Cause.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, 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.

The reasons cited in the landlords' application would need to be supported by sufficient and compelling evidence in order to qualify for the first part of section 55 of the *Act*.

Although the landlord testified to the issuance of a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, the landlords have not applied for an Order of Possession pursuant to this 1 Month Notice. The landlords, in their application, are attempting to obtain an early end to tenancy as they believe the tenant's behaviour has been threatening in nature. The landlords also believe the tenant has been engaging in illegal activity.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlords to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlords' application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although the landlords issued a 1 Month Notice for Cause, the landlords did not make an application for an Order of Possession pursuant to that 1 Month Notice. Although the landlords provided undisputed evidence that the tenant has denied the landlords access, and has changed the locks to the rental unit, I am not satisfied that the landlords provided sufficient evidence to support that the behaviour of the tenant is significant or serious enough to justify the early termination of this tenancy.

I am not satisfied that the landlords have provided sufficient evidence to support that the tenant is an immediate or ongoing threat to the landlords, landlords' property, or other occupants or tenants. I find that the landlords' failure to pursue an Order of Possession pursuant to the 1 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. I find that the landlords have failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. For these reasons, I dismiss the landlords' application for an early end to this tenancy.

As the landlords were not successful with their application, the landlords' application to recover the filing fee is also dismissed without leave to reapply.

Conclusion

I dismiss the landlord's entire application without leave to reapply. This tenancy continues until 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: September 8, 2020

Residential Tenancy Branch