



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dynamic Property Management
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

The landlord's agents appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing documents upon the tenant.

The landlord's agents testified that they compiled the proceeding package and the evidence available at the time of filing in an envelope and slid it under the tenant's door on September 15, 2020. The landlord's agents explained they tried multiple times to serve the tenant in person but there were unsuccessful in doing so and were of the view they did not have any other options and figured the best way for the tenant to receive the package was to slide it under his door. The landlord's agent took a video of this as proof of service. The landlord's agents testified that they subsequently entered the rental unit to do an inspection and they found the hearing package was no longer on the floor by the door and they were confident the tenant received the hearing package. The landlord's agent also testified that the tenant does continue to come and go from the rental unit as they had left a communication for him with respect to determining whether he had abandoned the rental unit and they received a note from him advising that he had not abandoned the rental unit.

The landlord's agents gathered further evidence after subsequent inspections of the rental unit and sent that evidence to the tenant via regular mail on October 14, 2020. The landlord's agents provided a photograph of the envelope addressed to the tenant with postage affixed.

An Application for Dispute Resolution and other required documents must be served upon the other party in a manner that complies with section 89 of the Act. Sliding documents under a rental unit door is not a permissible method of service; however, section 71 of the Act affords me discretion to deem a party sufficiently served even if they were not served in accordance with the Act.

Upon viewing the landlord's video of September 15, 2020, I am satisfied the hearing package was slid well under the rental unit door and that it was inside the rental unit. I am also satisfied the tenant has likely seen the hearing package on the floor as he has been coming and going from the rental unit and the hearing package was no longer on the floor when the landlord's agents inspected the unit. Therefore, I find I am satisfied the tenant likely received the hearing package and I deem him sufficiently served pursuant to section 71 of the Act.

Having deemed the tenant sufficiently served with notification of this proceeding, I proceed to consider the landlord's application.

Issue(s) to be Decided

Has the landlord established a basis for ending the tenancy early and obtaining an Order of Possession under section 56 of the Act?

Background and Evidence

The one year fixed term tenancy started on February 1, 2020. The landlord collected a security deposit of \$1075.00 and a pet damage deposit of \$1075.00. The tenant is required to pay rent of \$2150.00 on the first day of every month.

The landlord seeks to end the tenancy early due to the damage being caused to the rental unit and the unreasonable disturbance to other occupants caused by the strong smell of feces, trash and rotting food in the rental unit.

The landlord's agents submitted that the rental unit has been without electricity since July 2020 because the tenant has not obtained a hydro account. Electricity is needed to turn the heat on and power the appliances. The landlord is concerned about freezing pipes, rotten food in the fridge, and mouldy clothes in the clothes washer due to the lack of electricity. In addition, the tenant had a dog in the rental unit that he permitted to defecate in the rental unit. The dog was subsequently removed by the police when they

did a wellness check on the tenant and the SPCA are now involved. Further, the tenant has accumulated trash in the rental unit. The feces, rotten food and trash have resulted in the attraction of flies to the rental unit.

The landlord's agent testified that the smell emanating from the rental unit is so strong that it can be smelled in the hallway and the other tenants in surrounding units have complained.

The landlord's agents submitted that even after serving the tenant with the proceeding package subsequent inspections of the rental unit continue to show the rental unit is in very poor condition and there is still no electricity.

The landlord provided several photographs of the rental unit taken before the application was filed and during subsequent inspections.

Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 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.

The landlord's burden is high as section 56 is intended to apply in the most serious of circumstances.

Upon consideration of all of the unopposed evidence before me, including the testimony of the landlord's agents and the photographs, I find the landlord has cause to end the tenancy due to the actions, or lack thereof, of the tenant that have resulted in the loss of power to the rental unit; the accumulation of dog feces, trash and rotting food in the rental unit; the attraction of pests; and, creation of a strong offensive odour. I accept that the loss of electricity has potential to result in significant damage to the rental unit due to frozen pipes and damage to the appliances such as the fridge, with rotting food, and the clothes washer, with mouldy clothes. I accept that the accumulation of feces, trash and rotting food has resulted in the attraction of flies and a strong smell that is

unreasonably disturbing to the other occupants of the property and will require significant efforts to rid the rental unit of the smell. Given the unhygienic condition of the rental unit and the significant potential for further damage I am satisfied that it would be unreasonable to wait for a 1 Month Notice to End Tenancy for Cause to take effect. Therefore, I order this tenancy ended early and I provide the landlord an Order of Possession under section 56 of the Act.

In keeping with the above, I order the tenancy ended effective two (2) days after the tenant is served the Order of Possession. With this decision, the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

I award the landlord recovery of the \$100.00 filing fee. The landlord is authorized to deduct \$100.00 from the tenant's security deposit to recover this award.

Conclusion

I have ordered the tenancy is ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant under section 56 of the Act.

The landlord is awarded recovery of the filing fee and is authorized to deduct \$100.00 from the tenants' security deposit to recover this award.

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: October 29, 2020

Residential Tenancy Branch