



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on October 22, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on November 26, 2020 as a teleconference hearing. D.C. and A.C. appeared on behalf of the Landlord at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 16 minutes before the call ended. 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 from the online teleconference system that D.C., A.C., and I were the only persons who had called into this teleconference.

A.C. stated that the Application and documentary evidence package was served to the Tenant by registered mail on October 23, 2020. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on October 28, 2020. The Tenant submitted one piece of documentary evidence in response to the Application, however, no one attended the hearing for the Tenant to present the evidence for my consideration.

The Landlord's Counsel were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure.

However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

A.C. stated that the tenancy began on October 1, 2019. Currently, the Tenant is required to pay rent in the amount of \$6,500.00 which is due to the Landlord on the first day of each month. A.C. stated that the Tenant paid a security deposit in the amount of \$6,000.00 which the Landlord continues to hold. A.C. stated that the Tenant continues to occupy the rental unit.

A.C. stated that the Landlord is seeking to end the tenancy early based on the fact that the Tenant has significantly interfered with or unreasonably disturbed the landlord of the residential property and has put the Landlord's property at significant risk. A.C.

A.C. stated that the Landlord was contacted by the Police on September 21, 2020 with concerns regarding the Tenant's behaviour. A.C. stated that the Tenant displayed aggressive and hostile behaviour with Police which was capture on video and submitted into evidence. A.C. stated that the Tenant was later apprehended by Police. The Landlord provided a witness statement in support.

A.C. stated that the Tenant has also been cautioned regarding several concerns relating to misuse of the rental property. A.C. stated that the Tenant had been burning wood in a gas fireplace, which poses a severe fire risk. Furthermore, the Tenant had cigarette butts and ashes on the hardwood floor. The Landlord provided photographic evidence as well as a witness statement in support.

A.C. stated that there are other concerns such as the hot tub containing fish food, strawberries being thrown in the pond. The pool at the rental property has turned green and the gardens have not been maintained. A.C. stated that the Landlord is uncertain who is occupying the rental property currently, as the Tenant has changed to locks. A.C. stated that the Landlord feels as though the Tenant will not comply with their requests to rectify the situation.

A.C. stated that the Landlord subsequently served the Tenant with a One Month Notice to End Tenancy for Cause, with an effective date of November 30, 2020. A.C. stated that the Landlord is seeking to end the tenancy earlier than the effective date of the One Month Notice if possible, given the fire risk, the concerning behaviours, the misuse of the property, and the Landlords inability to access the rental property.

Analysis

Based on the unchallenged and affirmed documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy 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*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

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...

- (a) The tenant or a person permitted on the residential property by the tenant had 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 landlords 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 causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, A.C. outlined the Landlord's concerns relating primarily around the misuse of the rental property creating a fire risk, as well as for disturbing behaviour leading to Police contact.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act.

In light of the above, I dismiss the Landlord's Application, without leave to reapply.

As the Landlord was not successful with their Application, the Landlord is not entitled to recover the filing fee from the Tenant.

Conclusion

The Landlord has issued a one month notice to end tenancy for cause; however, they had insufficient evidence to prove it should end earlier under section 56. The tenancy will continue 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: November 26, 2020

Residential Tenancy Branch