



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VERNON NATIVE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

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Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an Order of Possession, pursuant to section 56.

The tenant did not attend this hearing, which lasted approximately 22 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed that she was the executive director of the landlord company named in this application and that she had permission to speak on its behalf at this hearing.

The landlord testified that she served the tenant with the landlord's application for dispute resolution hearing package on November 24, 2020, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 29, 2020, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on January 1, 2019. Monthly rent in the current subsidized amount of \$543.00 is payable on the first day of each month. A security deposit of \$650.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord stated the following facts. The tenant has not used the rental unit for its intended purpose, the landlord is scared that there will be a fire or assault, and the rental unit is being used as a "drug, flop house." At page 32 of the parties' tenancy agreement, it indicates that this rental unit is for "low-cost Native housing" and while the tenant is not "Native," his 2 daughters are. The tenant's daughters were removed from his home in June 2020, so the tenant no longer qualifies for the rental unit and has breached his tenancy agreement. The tenant has no chance of reconciliation and will not be getting his daughters back. In September 2020, an occupant from the rental building called the police, who arrested the tenant and two other women. Another occupant was afraid to complain against the tenant. The landlord did not obtain a police report for this incident. There is suspected "heavy drug use" at the rental unit.

The landlord testified regarding the following facts. The tenant has an unreasonable number of guests, three people, living in his basement, and this is hazardous because there is no escape or egress from there. The landlord provided photographs of the basement, where there are mattresses all over, but this is strictly an area for storage only. There are three bedrooms in this unit, and one was locked, preventing access to the landlord when it was inspected. There are letters of complaint provided by two witnesses, dating back to December 9, 2019, but other witnesses have been scared to complain against the tenant for fear of retaliation. There are "homeless, street people" with "backpacks" looking for the tenant's rental unit. The tenant is not permitted to sublet or engage in a co-tenancy, he has disturbed other people, and an early end to tenancy is the quickest way to get him out. The landlord is planning to sell the rental property and wants the tenant out to get his rental unit back in the landlord's possession. The landlord served the tenant with a One Month Notice to End Tenancy for Cause ("1 Month Notice") on October 28, 2020, to vacate by November 30, 2020.

Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (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;*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord did not testify about which one of the above parts of section 56(a) of the *Act*, she was applying under.

The landlord failed to show the urgency of this situation to demonstrate that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord suspects that the tenant is engaging in heavy drug use and he is allowing “street people” into the unit. However, the landlord failed to provide sufficient evidence of any criminal charges or convictions against the tenant. The landlord did not produce any police reports or police officers to testify at this hearing.

The landlord’s witness complaints date back to over a year ago on December 9, 2019, as this hearing was held on December 17, 2020. Other witnesses have not released their names to complain against the tenant.

The landlord’s main complaints are regarding too many people in the basement and the tenant not qualifying for the rental unit, due to his daughters being removed from his care. These two reasons do not qualify under section 56 of the *Act*, as noted above.

Accordingly, I dismiss the landlord’s application for an early end to this tenancy and an Order of Possession, without leave to reapply.

Conclusion

The landlord’s application is dismissed 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: December 17, 2020

Residential Tenancy Branch