



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened in response to an application by the Landlord for an early end to the tenancy and an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”).

Preliminary Matter

The Tenant’s Agent asks for an adjournment as the Agent has not had sufficient time to prepare for the hearing and to provide evidence. The Agent states that it is appearing on behalf of Tenant JW, the mother of Tenant KV, who is currently ill. Tenant KV appeared and was prepared to give evidence and make submissions although this Tenant also was concerned about its lack of evidence and would like more time as well. The Landlord states that the application and notice of hearing along with the evidence (the “Hearing Package”) was served to the Tenants by registered mail on November 13, 2020. The Tenant states that it has no idea when the hearing package was received by the Tenants.

Section 90(a) of the Act provides that a document given or served by registered mail, unless earlier received, is deemed to be received on the 5th day after it is mailed. Given the Landlord’s evidence of registered mail of the Hearing Package and in the absence of any evidence from the Tenant as to when the Hearing Package was received, I find on a balance of probabilities that it was received by the Tenants on November 18, 2020. Given this time frame I consider that the Tenants had sufficient

time to prepare for the hearing and to provide any evidence it may have wished to rely upon. As a result, I deny the Tenant's request for an adjournment.

Issue(s) to be Decided

Has the Landlord substantiated that the Tenant poses an immediate and severe risk such that it would not wait for a one month notice to end tenancy to take effect?

Background and Evidence

The following are agreed or undisputed facts: Tenant DA moved into the unit in October 2018. A written tenancy agreement was subsequently entered into with Tenant DA and Tenant JW with a start date of April 1, 2019. Rent of \$800.00 is payable on the first day of each month. The Landlord holds a security deposit of \$375.00 and a pet deposit of \$125.00.

The Landlord states that on three occasions, mid October, October 28, and November 5, 2020 the Tenant's car started on fire while the Tenant was working on the car. The Landlord states that the first incident occurred while the car was parked in the cul-de-sac, the second incident occurred while the car was parked down the street, and the third incident occurred on the front lawn of the house containing the rental unit. The Landlord states that it and another tenant occupies the house containing the rental unit. The Landlord states that on the first two occasion neighbours came out to assist with putting out the fires and that the police and fire department attended the second fire incident. The Landlord states that after the second incident the Tenant was asked by the police and fire department to move its car, so the Tenant towed the car onto the lawn of the house. The Landlord states that the Tenant again commenced to work on the car and a third fire occurred. The Landlord states that this fire was very large and the biggest of the three incidents. The Landlord states that the Tenant has been warned by the police and fire department and has not been compliant with their requests. The Landlord states that there are multiple police files as a result of the fires and the Tenant's behavior towards the Landlord. The Landlord states that the Tenant

banged on the Landlord's door on three occasions and that the police were called twice about this. The Landlord states that they are elderly with health condition and are scared for their safety. The Landlord states that the Tenant has brought another car and continues to work on this car while parked on the streets around the unit. The Landlord states that had its own car been parked in the driveway at the time of the 3rd incident their car would have been damaged or destroyed by the third fire had the gas tank on the car exploded. The Landlord is concerned that the Tenant will cause another fire. The Landlord states that the stress from the fires and the Tenant's antagonizing behavior has caused the Landlord to miss four weeks of work due to stress from the situation.

The Tenant states that it is unbelievable that it would be evicted for the fires. The Tenant states that the car had a wiring issue that was not known to the Tenant. The Tenant states that this car has been gone since November 12, 2020 and that the new car is parked on the street as the Tenant does not have a parking spot at the unit. The Tenant states that it towed the car to the lawn as the bylaw officer told the Tenant to move the car and there was no other place to park it. The Tenant states that the part of the lawn that the car was parked on is city property. The Tenant states that the water pressure from the house is low and that when the fire started again the Tenant could not put out the fire with the water hose for this reason. The Tenant argues that the fire would have been put out had the water pressure been sufficient. The Tenant states that no fire extinguisher was present. The Tenant states that on the first incident the fire extinguisher that they had worked but ceased to work after the first incident. The Tenant states that the Landlord did not provide them with a fire extinguisher for their rental unit and that the Tenant did not have a fire extinguisher present when it was working on the car. The Tenant states that it is only doing minor work on the new car such as cleaning.

The Tenant states that the Landlord has been harassing and bullying the Tenant about the eviction and that the Landlord does not like the Tenant because he does not work,

has a BMW car and smokes weed. The Tenant states that the Landlord's originally gave Tenant JW an eviction notice that the Tenant never saw. The Tenant states that he only knew about the eviction as he was called by Tenant JW who told him to stay away from the unit that day because of an emergency eviction that was received. The Tenant states that he only went to knock on the Landlord's door to ask for a copy of the tenancy agreement and a copy of the eviction notice.

The Landlord states that it never served the Tenants with any notice to end tenancy. The Landlord confirms that the Tenants were only served with the application for the early end of the tenancy. The Landlord states that the Tenant did not pay rent for December 2020.

The Parties were each given a final opportunity to provide relevant evidence that had been missed during the hearing. The above background and evidence include the Parties final evidence submissions.

Analysis

Section 56(2) of the Act provides that 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.

As the first two fires did not occur on any part of the Landlord's property and as the Act does not regulate a tenant's behavior in public areas, I consider that the Landlord has not substantiated an end to the tenancy for these incidents or for the Tenant's ongoing activity involving the new car while parked on public streets. Although the Landlord's evidence is that the Tenant is not compliant with requests from the police and fire department, there is no evidence about the details of requests and it may very well be that the Tenant has not been compliant while on public property as there is no evidence that the Tenant was not allowed to move its car onto the Landlord's property.

While the third fire may have occurred on that part of the Landlord's lawn that is public property, it appears that the Landlord's primary concern is that the Tenant will cause another fire while on the property. However, it is undisputed that the Tenant does not have a parking spot on the Landlord's property and now has a different car. While it may be accepted that the Tenant used very poor judgement in continuing to work on its car while in close proximity to the house and rental units after the car had caught fire twice previously, there is no evidence of any intent to create a fire, this was a one time incident on or near the Landlord's property, there is no evidence of any damage to anyone or anything, and ending the tenancy immediately without a notice to end tenancy for very poor judgement seems to be a disproportionately harsh result. The evidence of the Tenant banging on the door of the Landlord's residence and the

ensuing stress from the incidents is not evidence of an immediate and severe risk that would substantiate an end to the tenancy without notice. For these reasons I find on a balance of probabilities that the Landlord has not substantiated an early end to the tenancy. I therefore dismiss the application.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 09, 2020

Residential Tenancy Branch