



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA BROS HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's 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.

SS and PS attended as agents for the landlord in this hearing. The landlord was represented by their counsel, PV, who also attended the hearing. The tenant attended the hearing to confirm that she wished to be represented by her agent CP, and asked to be excused from the hearing. CM exited the hearing at 9:36 a.m., and CM testified on behalf of the tenant. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issues(s) to be Decided

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

Is the landlord 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 submitted a copy of a recent tenancy agreement, and states that this month-to-month tenancy began on August 13, 2019, with monthly rent set at \$4,000.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$2,000.00 for this tenancy, which they still hold. CP testified that he resides at the residence, and that this tenancy has been in place for at least five years.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause dated September 30, 2020, with an effective move-out date of November 30, 2020. On October 20, 2020 the landlord filed an application for an Order of Possession pursuant to that 1 Month Notice, and the matter was adjourned by the Arbitrator on January 14, 2021. A new hearing date is now set for April 13, 2021.

The landlord filed this application under section 56 of the *Act* on January 26, 2021 as they feel that the matter is so urgent that a further delay of the matter would cause the landlord significant losses that they cannot recover from the tenant.

Counsel for the landlord provided the following submissions. The landlord was informed in writing by city's licensing office alleging that they are in contravention of city bylaws, specifically the operation of a vacation rental located at the rental address without an active business license. The landlord was set a letter dated October 26, 2020, November 30, 2020, and December 16, 2020. The last letter dated December 16, 2020 states that the landlord must either submit a business license application or discontinue all advertisement and provide proof that the vacation rental has ceased operation by January 4, 2021, or failure to comply will result in legal action, which includes additional fines of \$450.00 for every 24 hours of non-compliance. A copy of the online advertisement dated and time stamped October 26, 2020 3:44 pm PT was submitted for this hearing, as well as a Bylaw Offence Notice dated December 16, 2020 that states a penalty of \$450.00 has been issued.

The landlord also received a demand letter from legal counsel dated September 10, 2020 representing a party who rented the property on or about July 13, 2020 for a period of 6 nights. The demand is for the return of a \$1,000.00 security deposit plus \$225.00 in cleaning fees.

The landlord believes that the tenant continues to operate the vacation rental out of the rental address, and as a result has seriously jeopardized the lawful right or interests of the landlord. The landlord is especially concerned about the mounting legal and financial liability on the landlord if the landlord had to wait until at least April 13, 2021 for the new hearing date. The landlord also expressed concern that the tenant has not

allowed access to the inspect the rental property despite proper notice, and that in the case that they would need to recover losses from the tenants, they would not be able to do so given their financial situation.

CP testified that the home does contain a separate suite, and that the tenant had permission to rent that suite out. CP testified that the tenants dispute the landlord's allegations that they are operating a short-term or vacation rental out of the rental address, and testified that they have been in communication with the city in order to achieve a resolution of the matter. CP states that he resides at the property full-time with his family, and that there is no illegal activity on the premises.

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 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, 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 landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first

part of section 55 of the *Act*. 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 landlord to wait until an application to end the tenancy for cause were considered.

The landlord submitted in evidence several letters informing them that there is an alleged bylaw infraction involving the rental address, and a possible fine of \$450.00 for every 24 hours of non-compliance may be issued. The landlord also submitted a copy of a demand letter from a party who had rented the property on a short-term basis, and an advertisement of the property for rent as a vacation rental.

The landlord served the tenant with a 1 Month Notice to End Tenancy, but the hearing date is set for April 13, 2021. The landlord is concerned about the consequences of having to wait any longer as they believe that the tenant continues to rent out the property, and as a result the landlord may be held liable, and incur significant financial losses.

I have considered the submissions and evidence of both parties. 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. As stated in Residential Policy Guideline 51, applications to end a tenancy early for very serious breaches only.

I acknowledge the fact that the landlord did issue a 1 Month Notice, and filed an application for an Order of Possession in October of 2020. I also acknowledge the landlord's concerns that the adjourned hearing date is set for April 13, 2021, and the landlord fears that a further delay of the matter and the continuance of this tenancy could possibly result in significant financial losses in the form of fines and financial liability. I am not satisfied that the landlord has demonstrated that there is an immediate danger or threat to the property or the landlord. Although there is a threat of financial liability as a result of the alleged actions of the tenant or occupants, I do not find that threat to be serious enough 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 landlord's application for an early end to this tenancy.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful in their application, the landlord must bear the cost of this filing fee.

Conclusion

I dismiss the landlord's application in its entirety. 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: February 19, 2021

Residential Tenancy Branch