



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Valley Realty
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 of the tenancy and Order of Possession pursuant to section 56; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "Landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end of the tenancy and Order of Possession?
Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in 2014. The current monthly rent is \$616.00 payable on the first of each month. A security deposit of \$275.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a basement suite in a detached home with the upstairs unit occupied by a different tenant.

The landlord submits that they have received multiple complaints from the upstairs occupants that the tenants smoke in the rental unit causing excessive smoke and odors. The landlord testified that after the tenants have been asked to curtail their smoking they have begun engaging in hostile and threatening behaviour including yelling at the upstairs unit, pounding on walls and ceilings and interfering with the operation of the shared laundry machine. The landlord submitted into evidence copies of correspondence with the upstairs neighbor where they complain about the conduct of the tenants.

The tenant disputes the landlord's allegations in their entirety and says that they have not acted in an aggressive or threatening manner and have not caused damage to the rental property. The tenant explained that they do use marijuana but not in the rental unit.

The parties testified that the landlord has issued a 1 Month Notice to End Tenancy on or about March 22, 2021 at the same time as they filed the present expedited application. The parties say that the effective date of the 1 Month Notice is April 30, 2021.

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.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

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.

Based on the testimonies of the parties and the evidence submitted, I find insufficient evidence that the tenants have engaged in any conduct that would give rise to an early end of the tenancy. While I accept that the landlord and the occupants of the other unit in the rental building have complaints about the tenant's conduct and behaviour, I find insufficient evidence that it would be unreasonable or unfair to wait for a 1 Month Notice to End Tenancy under section 47 to take effect.

While I accept the landlord's submissions that they feel uneasy to have the tenancy continue, I find insufficient evidence that there is urgency such that it makes it unreasonable or unfair to wait for a notice to take effect. An application for an early end to tenancy requires considerably more than simply demonstrating conflict between the occupants of the building and some interference on the part of the tenants.

I find insufficient evidence that the continuation of this tenancy until such time as a notice can take effect is unreasonable or unfair. I find the description of the circumstances to demonstrate some inconvenience and conflict between the occupants of the property but not to a level or frequency which gives rise to an early end of the tenancy.

Consequently, I dismiss the landlord's present application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. 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: April 23, 2021

Residential Tenancy Branch