



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

A matter regarding ARAGON DEVELOPMENT CORP
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.

The landlord was represented by their agents MJ and PJ in the hearing. EN also appeared for the landlord. 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 tenant outlined the history of her tenancy within different units in the same building, which began in October 1, 2004 when the tenant resided in a different suite with CA,

who is now her ex-boyfriend. The tenant moved into this specific suite on July 1, 2009 with CA. LR states that CA and her broke up in 2011, but they remained in the suite together as friends until she had moved out with new boyfriend SH on August 1, 2014, with whom she now resides in a different suite with. CA remains in the rental unit.

The matter was brought up in a previous hearing held on October 22, 2019, and the Arbitrator made the following findings in the October 25, 2019 decision about the landlord's claim that LR had sublet or assigned the rental unit without the landlord's written consent:

"With respect to the third claim in the Notice, the parties agreed that about six years ago, the tenant sublet the unit without the landlord's consent to CA. The parties also agree that the landlord was informed of the sublet for six years and has submitted no documentary evidence of informing either the tenant or CA that the landlord objects to the tenancy. The landlord has accepted rent directly from CA. CA has performed work for the landlord for which he has been paid.

I find that the legal principle of estoppel applies to this situation. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.

I find the landlord established a pattern of accepting rent from CA and acknowledging that CA was the de facto tenant of the unit. I find the tenant and CA relied on this pattern and CA has lived there without notice of objection from the landlord for six years. I find the landlord is estopped from now claiming that the tenant sublet the unit to CA without authorization and in violation of the lease."

After the decision, CA has continued to reside in the rental unit. The landlord testified that the monthly rent is paid through preauthorized withdrawal in the amount of \$1,435.00 per month, and still considers LR to be the main tenant for the rental unit.

The landlord filed this application on April 9, 2021 for an Order of Possession pursuant to section 56 of the Act as the landlord feels that they cannot wait for the upcoming hearing scheduled for May 18, 2021 to deal with a 1 Month Notice to End Tenancy For Cause served on the tenant on February 18, 2021.

The landlord provided detailed evidence, which as stated above, I will not reproduce here. The main reason that the landlord filed this application is that they feel that the CA remains in the rental unit, and has allowed unauthorized access into the building which the landlord has linked to the tenant. The landlord testified that it was confirmed that CA's guest was buzzed in CA on January 29, 2021. The landlord testified that there are multiple ongoing police investigations that involve unauthorized access and illegal activity such as mail theft in the building. The particular incident that is linked to CA and his guest involves a dolly with a large box that was brought up to the fourth floor where CA resides, and later brought down to the loading and lobby where a disguised person had accessed after entering through a wedged door. The disguised person stole several packages, and returned later to attempt to commit more thefts.

The landlord believes that the disguised person is either CA, or an associate of CA. The landlord testified that the person knew the building well, and the matter is still an active police investigation with several occupants in the building have reported missing or stolen mail and packages.

The police had questioned CA, and CA stated that he was not responsible for the thefts or illegal activity. The landlord submitted a history to show that these thefts were not an isolated incident, and that the building had a history of issues as indicated by the evidence and police file numbers. The landlord testified that CA has been involved in "weird behaviour" such as being found sleeping on a couch, and possible dealing of drugs in a truck. The landlord testified that in addition to the written complaints, the landlord has received numerous verbal complaints about CA and CA's guests.

The landlord is seeking an early termination of the tenancy due to the lack of responsibility that CA has taken for his behaviour and the behaviour of his guests, which the landlord alleges has put the landlord's property, and safety and lawful right of all occupants in the building at risk. The landlord testified that since deactivating CA's access card to the building through the buzzer, the landlord had noticed a significant change and that they have not received any more reports of thefts. The landlord testified that they have looked into as many options as possible at dealing with the issues and keeping all the tenants and occupants in the building safe.

The landlord testified that there are other issues, including hoarding and ignoring covid-19 protocols. The landlord feels that the CA has not corrected his behaviour despite the issuance of the 1 Month Notice, and poses a continued and immediate risk to everyone in the building.

LR and CA dispute the allegations made by the landlords, and testified that although CA's sister does have a problem with drugs, and although CA does talk to homeless people, the landlord has not provided sufficient evidence to end this tenancy under section 56 of the Act. LR testified that there are numerous homeless people in the area, and that the allegations against CA have not been proven.

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 detailed evidence to support that there have been numerous issues with suspicious activity and theft of mail and packages from the building. The landlord testified that the police are involved in investigating these matters, which may involve CA who had provided access to a guest into the building. Although CA does not dispute having let his guest into the building, CA denies his involvement in the illegal activity. Both parties confirmed that CA's buzzer access had been suspended by the landlord, and the issue is scheduled to be heard at the hearing scheduled for May 18, 2021. The landlord testified that the reports have theft have diminished since they had done this.

The landlord served the tenant with a 1 Month Notice to End Tenancy, which the tenant disputed. The matter is also set for May 18, 2021. The landlord is concerned about the consequences of having to wait for the decision from that hearing as the landlord believes that the tenant has disregarded the concerns of the landlord, and poses a significant risk to the landlord and all the occupants in the building.

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 the matter is scheduled to be heard on May 18, 2021. I also acknowledge the landlord's concerns about the safety, security and legal right of all residents in the building.

Although I find that there have been significant issues faced by the landlord and residents in the building which involve theft and unauthorized access into the building, I find that these matters are still being investigated by the police. I find that the landlord has provided insufficient evidence to support that CA is responsible for these matters. Furthermore, although I find that the landlord has been extremely diligent in pursuing every avenue possible to protect the residents in the building, in light of the disputed allegations of CA and CA's guests, I do not find the threats referenced in the landlord's application to be serious or urgent 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. As the landlord stated, the incidents of theft have decreased, which I find may or may not be associated to the buzzer access. For these reasons, I dismiss the landlord's application for an early termination of this tenancy. The tenancy is to continue until ended in accordance with the *Act*.

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: May 11, 2021

Residential Tenancy Branch