



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On May 7, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an early end of tenancy and an order of possession for the rental unit.

The matter was scheduled as teleconference hearing. The Landlord and Tenant attended the hearing. The Tenant was assisted by an advocate.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Background

The rental unit is a house that has a main suite and two lower suites.

The Landlord did not prepare a tenancy agreement in writing. The Landlord and Tenant testified that the tenancy is based on a verbal agreement.

The Landlord provided testimony that the Tenant began living in the unit without permission about two years ago. Eventually the Landlord started taking rent from the Tenant and a tenancy was established.

The Tenant testified that the tenancy began in February 2020.

The Landlord testified that rent in the amount of \$2,300.00 is due to be paid to the Landlord by the first day of each month. The Tenant testified that rent was \$2,300.00 each month but was then increased to \$2,600.00 by the Landlord.

The Landlord stated that the Tenant did not pay a security deposit. The Tenant stated that a security deposit of \$1,150.00 was paid to the Landlord.

The Landlord testified that the Tenant occupies the entire house and that the Landlord does not have a tenancy agreement with any other occupants living in the home including the two lower suites. The Tenant testified that he only occupies the main floor of the house and he is not responsible for the occupants living in the two lower suites.

Preliminary and Procedural Matters

During the hearing the Tenant provided the correct spelling of his surname. The Landlord requested that the application be amended to the correct spelling. The Landlord's application is amended accordingly.

Issue to be Decided

- Does the Landlord have sufficient reason to end the tenancy early and receive an order of possession for the rental unit?

The Landlord testified that the residential property was declared a nuisance property and that he received a letter from the city stating that the rental home is not to be occupied. The Landlord did not provide the residential tenancy branch with a copy of the city letter.

The Landlord testified that there was an incident on March 4, 2021 where police attended the home and arrested 18 people. The Landlord stated that the police found a firearm and drugs present. The Landlord referred to his evidence of a media report that indicates a firearm, ammunition, and what was believed to be a controlled substance was found at the home.

The Landlord was asked if he has provided any evidence that the firearm was illegal, or that the substance found was an illegal drug and he replied "no".

The Landlord testified that he is facing a \$10,000.00 bylaw fine due to regular police attendance at the property and he is also being fined \$500.00 per day by the city.

The Landlord was asked why he waited for over two months to apply for an early end of tenancy when the incident that he refers to occurred on March 4, 2021. The Landlord testified that he was not aware that he could apply for an early end of tenancy, and that the Tenant keeps telling him he is moving out. The Landlord testified that he has not issued any notices to end tenancy to the Tenant. The Landlord also stated that he is taking action now because he is getting fined by the city.

The Landlord also testified that he received a call from a government ministry asking if the Tenant is the Landlord's agent because he is trying to rent out the unit to other people.

The Landlord did not provide any other details regarding regular police attendance at the property that has caused the property to be labelled a nuisance property or put his property at risk.

In reply, the Tenant testified that the Landlord has caused damage to the rental home. The Tenant provided testimony confirming that the police attended the home on March 4, 2021 and arrested people; however, they were all released by police within two hours.

The Tenant testified that nobody has been charged with a crime by police and that the firearm found is an antique rifle that does not fire. He testified that nobody has been charged with a drug offence.

With respect to the lower rental suites, the Tenant stated that he arranged for occupants to reside in the lower units with the Landlord's permission and the Landlord receives monthly rent from a government Ministry for those tenancies.

The Tenant's written submissions provide that the Landlord has presented a selective view of the facts in an attempt to avoid obligations under the Act and avoid the issuance of a proper notice to end tenancy. The Tenant submits that any damage to the rental property is a result of the Landlord's negligence or intentional damage by the Landlord.

Analysis

An application for an early end of tenancy under section 56 of the Act is reserved for situations where a Tenant presents an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the notice by applying for dispute resolution.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, the Tenant or a person permitted on the residential property by 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 interest 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,
- 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
- 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 or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

The Landlord has not complied with section 13 of the Act which requires him to put the tenancy agreement in writing. The parties are not in agreement on many terms of the tenancy, including who is responsible for occupants living in the lower suites.

Nevertheless, I find that there is a tenancy under the Act between the parties as there have been payments of rent in exchange of occupancy of the house.

A Landlord has the right to issue a notice to end tenancy for issues including non-payment of rent; breaches of a tenancy agreement; smoking; unapproved occupants; compliance with government orders; and noise violations.

In this hearing, the Landlord bears the burden to prove that there is sufficient reason to end the tenancy early.

While the Landlord provided evidence regarding the Tenant and property that is of concern, I find that the Landlord provided insufficient evidence that the Tenant poses an immediate and severe risk to the rental property; other occupants; or the Landlord. The Landlord did not provide a copy of a letter from the city stating that the home is not to be occupied.

The focus of the Landlord's testimony was on the incident of March 4, 2021 and the media reports surrounding that incident. There is insufficient evidence from the Landlord to establish that the firearm found was illegal, or that the substance found was illegal drugs. In addition, there was no detailed evidence from the Landlord that the Tenant is responsible for any other illegal activity on the property or behavior that put the Landlord property at risk.

I find that the Landlord applied for an early end of tenancy two months after the March 4, 2021 incident when he started to receive fines from the city.

The Landlord has not convinced me that 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 to be issued. The Landlord is at liberty to issue a One Month Notice to End Tenancy for Cause if he feels there is sufficient reason to end the tenancy.

The Landlord's application for an early end of tenancy and an order of possession for the rental property is dismissed.

Conclusion

The Landlord applied for an early end of tenancy and an order of possession. The Landlord provided insufficient evidence that the Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord.

The Landlord's application for an early end of tenancy and an order of possession 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 *Residential Tenancy Act*.

Dated: June 03, 2021

Residential Tenancy Branch