



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREATIVE CENTRE SOCIETY FOR MENTAL
WELLNESS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an Order of Possession, pursuant to section 56.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. "Witness AE" testified on behalf of the landlord at this hearing and was excluded from the outset and returned later to testify.

The landlord confirmed that she is the executive director for the landlord company named in this application and that she had permission to speak on its behalf.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of a hearing by any party.

During the hearing, I explained the hearing process to the landlord. The landlord had an opportunity to ask questions. The landlord did not make any adjournment or accommodation requests.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on May 31, 2021 and a notice of hearing was issued by the RTB on June 11, 2021. The landlord was required to serve that notice, the application, and all other required evidence in one package to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord stated that she personally served the tenant with the landlord's application for dispute resolution hearing package on June 11, 2021, which was witnessed by witness AE. The landlord provided a signed, witnessed proof of service to confirm same. In accordance with section 89(2)(c) of the *Act*, I find that the tenant was personally served with the landlord's application on June 11, 2021.

Issues to be Decided

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on April 6, 2021. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$375.00 is payable on the first day of each month. A security deposit of \$215.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant was arrested on June 24, 2021 and has not returned to the rental unit.

The landlord stated the following facts. The tenant is a danger to the building and the landlord requires an order of possession. The tenant did not move out on July 1, 2021. The landlord is on high alert because the tenant will burn down the building. The tenant is a clear and present danger to the property and other tenants.

Witness AE testified regarding the following facts. The tenant is a fire hazard and risk to the building. The tenant put a cigarette in the electrical outlet. The tenant left the unit with food on his stove. The tenant dismantled the smoke detector. Witness AE has witnessed some of these events and is describing what he sees in photographs in a binder that is stored on site at his employer's office. Witness AE works for a 24-hour on-site staff that is part of a joint venture with the landlord company.

Analysis

The following RTB Rules of Procedure are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord did not properly present her claims and evidence, as required by Rule 7.4 of the *RTB Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules*.

This hearing lasted 16 minutes and only the landlord attended the hearing, as no other parties were present. The landlord had ample opportunity to present her application. However, the landlord did not go through any of her documentary evidence submitted for this hearing, mentioning only letters, photographs and videos but not going through this evidence in any detail. The landlord was given ample time to present her case and was even repeatedly questioned if she had any other information to provide.

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

(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;*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord did not testify about which one of the above parts of section 56(a) of the *Act*, that the landlord was applying under.

The landlord failed to show the urgency of this situation to demonstrate that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined. The landlord did not indicate whether she issued a 1 Month Notice to the tenant.

The landlord and witness AE testified about some general events as noted in some photographs that they did not review with me during the hearing. They did not indicate when these events occurred or for how long they have been occurring. They did not indicate what events they personally witnessed and what events they saw in photographs taken. They did not indicate when the landlord's photographs were taken. They did not indicate what occurred since June 24, 2021, when the tenant was arrested and did not return to the rental unit.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: July 02, 2021

Residential Tenancy Branch