



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlords' 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 landlords were represented by their counsel, AS, in this hearing. Both parties attended the hearing, which was set for 11:00 a.m. Although the hearing was set for one hour, the hearing was extended an additional forty-two minutes in order to give both parties a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, and as the parties were unable to settle the dispute, the hearing proceeded as scheduled at 11:33 a.m.

The tenants confirmed receipt of the landlords' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the tenants duly served with the landlords' application.

Preliminary Issue – Admission of Landlords' Late Evidence

The landlords submitted evidence, specifically the case law that the landlord intended to rely on in the hearing, on July 26, 2021. The landlord's counsel confirmed that the tenants were not served with this late evidence.

Rule 10.2 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that an applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

As I am not satisfied that the tenants were served with this late evidence in accordance with section 88 of the Act and Rule 10.2 as set out above, I exercise my discretion to exclude these materials for the purposes of this expedited hearing. I allowed the landlords to give oral evidence, which may include a summary of the referenced caselaw for these proceedings.

With the exception of the late evidence referenced above, 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

Are the landlords entitled to an early end of tenancy and an Order of Possession?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, 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

This month-to-month tenancy began on May 1, 2021, with monthly rent currently set at \$1,800.00, payable on the 31st day of the month. The landlords collected a security deposit in the amount of \$900.00, which they still hold. The tenants continue to reside in the rental unit.

The landlords filed their application for an early termination of this tenancy pursuant to section 56 of the *Act*, as the landlords feel that the tenants provide childminding for a friend's child in the home, which would void the landlord's home insurance policy as the childminding constitutes a business. The landlord argued that not only is the childminding a business being operated out of the home, the lack of insurance coverage for the home would put the home in immediate and significant risk.

Counsel for the landlord provided the following submissions. I note that much of the evidence was undisputed by the tenants, including the fact that the tenant EL does

provide child minding services for a friend's child, which on average has been observed to be during the hours of 7:00 a.m. to approximately 6:00 pm., six days per work. The child's father works with the landlord JC, and the parents soon became good friends around April 2021. Counsel for the landlords stated that after discovering that the tenant was providing childminding services, the landlords had contacted their insurance provider about the impact on their coverage, and the insurance provider informed the landlords verbally that child minding constituted a business, and that this would void the policy. The landlords provided a copy of their insurance policy, which states that the "policy is void if tenant is conducting a business on the premises, unless permission is given by us". The landlords argued that they did not have permission from the insurance provider, and as the tenants continue to provide the childminding services, the landlords' insurance policy would consequently void the policy, leaving the landlords' rental property at significant and immediate risk.

The landlords served the tenants with a 1 Month Notice to End Tenancy for Cause on June 6, 2021 for putting the landlords' property at significant risk, and for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Counsel for the landlord confirmed that as of the hearing date, the landlords have not filed any other applications other than this one. Counsel also confirmed that the landlords have not received written correspondence from the home insurer that their policy has been cancelled, or is void. Counsel for the landlords argued that the tenants have sacrificed a significant amount of time, energy, and resources to provide services for the child and their family, and regardless of whether there is any acknowledgement of remuneration or not, the childminding would fall under the definition of a business for the purposes of the insurance policy.

The tenants do not dispute that they have been providing childminding services for the child of a co-worker and friend. The tenants dispute the landlords' claims that the childminding constitutes a business, and consequently would put the landlords' home at significant risk. The tenants called the mother of the child as a witness who confirmed that the EL provided childminding services as EL was a stay-at-home mom, and was happy and able to provide the favour without charge in order to provide the tenants' daughter of similar age with a playdate.

Analysis

The landlord, in their application, requested an Order of Possession on the grounds that the tenants have put the landlords' property at significant and immediate risk.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, I need to be satisfied that the tenants have 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.

I find that in this matter it is undisputed that the tenants are providing childminding services for another party. For the purposes of an application under section 56 of the *Act*, the question is whether the landlords have met the test to demonstrate that not only would they qualify for an Order of Possession under section 55 of the *Act*, but that it would be unreasonable or unfair to the landlords to wait until an application to end the tenancy for cause were considered. In support of their application, the landlords provided written evidence to support that their insurance policy explicitly states that the "policy is void if tenant is conducting a business on the premises, unless permission is given by us". The landlords' testimony is that they confirmed with their insurer, and that the childminding constituted a business, and that this would void the policy.

Although the landlords testified to the issuance of a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, the landlords have not applied for an Order of Possession pursuant to this 1 Month Notice. The landlords, in their application, are attempting to obtain an early end to tenancy as they believe the tenants have acted in a manner that has put the landlords' property at significant and immediate risk, which justifies an Order of Possession pursuant to section 56 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 landlords to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlords' application falls well short of the requirements outlined in section 56 of the *Act*. 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.

Although the landlords issued a 1 Month Notice for Cause on June 6, 2021, the landlords did not make an application for an Order of Possession pursuant to that 1 Month Notice. Furthermore, despite the conversation referenced in the hearing between the landlords and their insurer, the landlords failed to provide written evidence or witness testimony to confirm that the childminding was in fact deemed by the insurer or underwriter to be a business for the purposes of the policy, and that this would immediately void or cancel the policy.

As stated above, the landlords' failure to pursue an Order of Possession pursuant to the 1 Month Notice issued on June 6, 2021 does not automatically qualify them to apply under section 56 of the *Act*. I find that the landlords' failed to provide sufficient and compelling evidence 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. Although the landlords may have justifiable reasons to be concerned about their insurance coverage, I do not find that that the landlords have met the criteria for obtaining an Order of Possession under section 56 of the *Act*. I am not satisfied that the landlords have provided sufficient evidence to support that the tenants have caused their insurance policy to be void or cancelled, nor am I satisfied that the tenants have put the landlords' property at immediate or significant risk. For these reasons, I dismiss the landlords' application for an early end to this tenancy without leave to reapply.

As the landlords were not unsuccessful in this application, I dismiss the landlords' application to recover the filing fee from the tenants without leave to reapply.

Conclusion

I dismiss the landlords' application 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: July 27, 2021

Residential Tenancy Branch