



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an order for early termination of a tenancy, pursuant to section 56.

I left the teleconference connection open until 10:20 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent YP (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witnesses ZS and BW also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, her witnesses and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) on August 18, 2021 by attaching the materials to the rental unit door. The landlord submitted into evidence a witnessed proof of service and a photograph of the package containing the materials attached to the rental unit door. I find the tenant was served the materials in accordance with section 89(2)(d) of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if attached to a door on the third day after it was attached. The tenant is deemed to have received the materials on August 21, 2021, in accordance with section 90(c) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issue to be Decided

Is the landlord entitled to an order for early termination of the tenancy?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on April 01, 2020. Monthly rent is \$1,650.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit and a pet damage deposit in the total amount of \$1,650.00 and holds this amount in trust. The tenancy agreement was submitted into evidence.

The landlord stated she believes the tenant has been engaged in illegal activity and causing damage to the rental unit and she is aware of this situation since August 2020. The landlord confirmed the tenant continues to occupy the rental unit and paid rent on August 01, 2021. The landlord testified she lives in another province and ZS helps her to manage the rental unit.

Witness BW said he lives in the neighbourhood of the rental unit and he has witnessed drug users and prostitutes entering the rental unit since the start of the tenancy. BW affirmed he observed a moving truck on the rental unit's driveway three days before the hearing.

Witness ZS stated the rental unit was listed for sale in the spring and she is the listing agent. ZS testified she observed drug users in the rental unit, the utilities (electricity and water) were disconnected, the front door was unlocked, and windows were broken. ZS said another real estate agent told her that 10 to 12 stolen bikes were found in the basement in July 2021. ZS believes the tenant is subletting the rental unit.

ZS affirmed a one month notice to end tenancy was served on July 31, 2021 because of illegal activity and damage caused to the rental unit. On August 05, 2021 a house inspector visited the rental unit and was denied access. ZS texted the landlord:

ZS: the home inspector said there is a lot of crack users in the basement. It is unsafe to go inside. Nothing can be done until the house is vacant. They likely changed the lock again. The home inspector [...] will write a statement of what he saw there regarding the crack users. So you can maybe report it to the RCMP.

Landlord: I called the police officer

ZS stated the inspector observed through the windows that there were more than ten people in the rental unit using drugs and one of them told the inspector that they are squatters.

The landlord testified the police informed her the rental unit is a safety problem and provided a police file number.

Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

When the tenant does not attend the hearing, the landlord continues to have the onus of proof to establish the claim.

Section 56 (2) of the Act states:

(2)The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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;
- (v)caused extraordinary damage to the residential property, and
- (b)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 [landlord's notice: cause] to take effect.

Residential Tenancy Branch Policy Guideline 51 explains the importance of landlord providing evidence that is unreasonable or unfair to wait to end the tenancy with a one month notice:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

The landlord did not provide relevant documentary evidence. The text message submitted is between witness ZS and the landlord. The landlord did not submit the inspector's statement or photographs showing the rental unit's condition. The inspector did not attend the hearing as a witness.

Based on the testimony offered by the landlord and witness BW, I find the landlord has been aware since August 2020 that the tenant may be using drugs in the rental unit. The August 05, 2021 incident is related to drug use. I find the testimony about using drugs and damage caused to the rental unit was not detailed. The landlord did not provide an example of extraordinary damage to the rental unit and did not provide the police file details.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, the tenant, or someone the tenant permitted on the property, has engaged in any of the actions of section 56(2)(a) of the Act.

Therefore, I dismiss the landlord's application without leave to reapply.

Conclusion

I dismiss the landlord's application without leave to reapply. The tenancy continues 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: August 31, 2021

Residential Tenancy Branch