



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On September 1, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on an early end of tenancy pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was set down for a hearing on September 28, 2021 at 1:30 PM.

The Landlord attended the hearing, with P.S. attending as a co-owner of the rental unit and P.V. attending as an agent for the Landlord. However, the Tenant did not attend at any point during the 54-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of P.V., provided a solemn affirmation.

The Landlord advised that the Notice of Hearing and evidence package was served by hand to an adult that apparently resided with the Tenant, on September 15, 2021. A proof of service form, signed by this person, was submitted to corroborate service. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served the Notice of Hearing and evidence package. As such, this evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on February 1, 2020, that rent was \$1,300.00 per month, and that it was due on the first day of each month. She was not sure if a security deposit or a pet damage deposit were ever paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord submitted that she was seeking an early end of tenancy because the Tenant has brought a lot of stress on her. She stated that the Tenant was on drugs and that the Tenant would not allow the Landlord to show the rental unit on three separate occasions. She stated that the Tenant has two or three dogs in the rental unit that are unattended and that they defecate in the yard. She stated that the neighbours have complained because guests of the Tenant were having sex in the shed. She testified that the police have been called many times, that she has received warnings and fines from the municipality due to debris that the Tenant leaves in the yard, and that the property is not liveable.

P.V. advised that there were three main reasons why the Landlord is applying for an early end of tenancy. He submitted that there is continual damage to the property because the Tenant has left all manner of debris in the yard, resulting in multiple warnings from by-law officers and then subsequent ongoing fines as the Tenant has not rectified these issues. He referenced two fines, dated August 4 and 6, 2021, pictures of the debris, and a copy of the applicable Good Neighbour by-law to support this position. He stated that the Landlord issued the Tenant a written request to clean up the yard on July 22, 2021; however, the Tenant did not comply and the garbage remains.

P.V. submitted that the second reason for this Application is because the Tenant will not assist in the sale of the property as she will not comply and allow the Landlord to show the property despite written notices being given to the Tenant for entry. He stated that the Tenant has dogs that are unattended that cause anyone who enters to be fearful.

Finally, P.V. advised that the third reason for this Application is because of an incident that took place on August 30, 2021 where the Tenant was found unconscious in the rental unit. The police were called and there was a file number associated with this incident. The Tenant's child was removed from her custody by social services, and as it is clear that she is unable to adequately care for her child, the Tenant can therefore not take care of the rental unit. He also submitted that the current resident in the rental unit is not authorized to live there and that she is on probation.

V.S. testified that showings of the rental unit were scheduled on August 30, 2021, starting at 1:00 PM. However, the Tenant called V.S. at 12:45 PM advising her that she had contracted COVID, so V.S. then called the attending realtor to inform them not to enter the rental unit. The realtor had shown up early with a social worker, who was also a prospective purchaser, and they had already entered the rental unit as the front door was broken. They observed the Tenant lying on the floor unconscious, and the Tenant's child sitting next to her. They called V.S. who in turn called the police. She stated that six police officers attended the scene with paramedics attending as well. She left the property after about an hour and a half and she does not know if the police made any determinations when investigating this situation, nor does she know what the paramedics determined when assessing the Tenant's condition. However, she speculated that the Tenant was on drugs and drunk as she has smelled the odour of alcohol on the Tenant in the past. She did confirm that the Tenant's child was taken from her by child services, though.

V.S. also spoke of another incident on September 1, 2021 where the police were called, and another file number was associated with this interaction. She stated that a squatter was sleeping in the shed and when he was approached, he yelled "What do you want?" and "Get out!". She testified that the police were again called, that the police talked to all parties, and that they then provided V.S. with the second file number. She confirmed that the police take any other action regarding this complaint, other than talk to the parties involved.

P.V. submitted that this person was a large individual, and while his remarks were not direct, violent threats, his tone, demeanour, and body language would certainly be considered threatening.

V.S. acknowledged that the Tenant was served a One Month Notice to End Tenancy for Cause in July 2021, and she confirmed that she did not apply for an Order of Possession on this notice. P.V. advised that the reason she did not make an Application for an Order of Possession on the notice was because the Landlord was attempting to work with the Tenant and was also attempting to sell the rental unit, instead of managing the issues.

V.S. also made brief references to damage to the rental unit. Her and P.V. were asked repeatedly if they wanted to elaborate, or provide further, detailed submissions on any aspects of damage to the rental unit that may be considered extraordinary damage that would justify an early end to this tenancy. However, they elected, multiple times, not to provide any further submissions on this potential consideration of an early end of tenancy, as the three reasons outlined above were sufficient for filing this Application.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlords to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. 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.

As noted above, this type of Application is reserved for the most severe of circumstances, the threshold for establishing an early end to the tenancy is extremely high, and that the onus rests with the Landlord to establish her claims.

When reviewing the totality of the evidence before me, it is clear that the Landlord/Tenant relationship is strained and is tenuous at best. With respect to the first

incident described, there is no dispute that the Tenant has kept debris and refuse on the property that has resulted in a request from by-law services, dated July 7, 2021, to be issued. I find it important to note that in this request, it notes that dead weeds and overgrown grass must be cut to less than three inches in length, that noxious trees must be removed, and that specific rubbish must be removed as well. Furthermore, these issues must be corrected by July 22, 2021. The Landlord has also presented two by-law fines, dated August 4 and August 6, 2021, that have been issued against the Landlord because the Tenant has not complied with these violations of the Good Neighbour by-law.

While I accept that this is occurring, it is not clear to me how this situation would meet the elevated threshold of an end of tenancy early Application. I do not find that the Landlord has submitted sufficient evidence to demonstrate the urgency of how the presence of overgrown weeds and grass and rubbish would justify an early end to the tenancy. Moreover, I can reasonably infer that the Landlord's One Month Notice to End Tenancy for Cause, served to the Tenant in July 2021, was at least served in part due to this issue. However, in my view, if this situation were so dire, I question the Landlord's reluctance to apply for an Order of Possession on this notice.

Furthermore, had this by-law issue been of such significance in July 2021, I find it odd that the Landlord would not have attempted to make the Application for an early end of tenancy at that point, instead of curiously waiting an additional two months to do so. I find this further supports a finding that this is not an issue of extreme significance. When reviewing the evidence and testimony before me, I am not satisfied that this situation, as described by the Landlord, would satisfy the high threshold to warrant an early end to the tenancy.

Regarding the second claim that the Tenant would not allow the Landlord to show the property despite the proper written notices to enter being given to the Tenant, as the Landlord was advised during the hearing, once the proper written notice has been given and the appropriate timeframes have elapsed, the Landlord can simply enter the rental unit. I find it important to note that she did not provide any evidence that the Tenant was physically barring her from entering, nor were there any threats of violence. While I accept that the Landlord may feel fearful from entering the rental unit, I find that there is little compelling or persuasive evidence submitted by the Landlord that the Tenant has engaged in any activity or behaviour that would substantiate a justification for an early end of tenancy.

Finally, with respect to the third reason for this Application, I accept the undisputed evidence that Tenant was found unconscious in the rental unit on August 30, 2021 and that her child was taken from her that day. However, I find it important to note that the Landlord has submitted scant evidence to support what specifically occurred during this incident. While she speculates that the Tenant was on drugs and/or drunk, there is insufficient evidence of a serious incident or crime that was committed, and there is

unsatisfactory evidence of the Tenant's health condition as determined by the paramedics at that time.

I appreciate the Landlord's concern in this matter based on her troubled experience to date with the Tenant; however, given the limited supporting documentary evidence, there are other plausible circumstances that could have occurred that day that vary from the Landlord's portrayal of the events. I also acknowledge that the Tenant could have possibly made an erroneous allegation of contracting COVID. However, again, there was insufficient evidence to support the seriousness of much of what the Landlord portrayed in this incident. Witness statements to corroborate the magnitude of the circumstances as described may have been helpful in supporting the Landlord's allegations.

Regarding the Landlord's claims of threats made by a guest of the Tenant on September 1, 2021, while I acknowledge that the Landlord may have felt fearful or intimidated by being yelled at forcefully, I find it important to note that the police attended, and it does not appear as if they determined after their investigation that the situation was significant enough to warrant any further action. Given that the police took no action, as the nature of these comments, while inappropriate, do not appear to have been direct threats to harm the Landlord, and as there is insufficient evidence of any attempted physical threats towards the Landlord, I am not satisfied that the Landlord has sufficiently justified the high threshold for establishing an early end of the tenancy on these points.

In reviewing the totality of the evidence before me, I find it more likely than not that the Tenant, or her guests, have engaged in many actions and detrimental behaviours that would likely support the formation of, and the justification for, ending the tenancy with a One Month Notice to End Tenancy for Cause. However, with respect to this type of Application, I do not find that any of the Landlord's submissions have met the burden of proof to satisfy the elevated threshold to warrant ending this tenancy early.

Consequently, I find that the Landlord is not entitled to an Order of Possession, and I dismiss this Application in its entirety.

As the Landlord was not successful in this Application, I find that the Landlord is not entitled to recover the \$100.00 filing fee.

Conclusion

Based on the above, I dismiss the Landlord's Application 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: September 29, 2021

Residential Tenancy Branch