



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 landlord's 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.

JM, (landlord"), represented the landlords in this hearing, while MH represented the tenants. Both parties attended the hearing and were given 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.

The tenants confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the Application and evidence. The tenants did not submit any written evidence for this hearing.

Issues(s) to be Decided

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

Is the landlord 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 provided in the hearing, 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 March 1, 2020, with monthly rent set at \$2,400.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,200.00 for this tenancy. Both parties confirmed that CD and AS are the named tenants on the written tenancy agreement, while the other parties in the hearing currently reside at the rental unit as well.

JM testified in the hearing that the landlord had previously served the tenants with Notices to End Tenancy, with the most recent a 10 Day Notice to End Tenancy for Unpaid Rent, which was served on the tenants on August 6, 2021. JM confirmed that the landlord has not filed any other applications at this time.

The landlord testified that they are seeking an immediate end of this tenancy due to the ongoing and significant risk to the property as well as the landlord, who resides in the home next door. The landlord testified that not only were there issues with the payment of rent, the tenants and their guests are involved in ongoing issues and disturbances that have resulted in numerous visits by the police, including a raid just a week before the hearing. The landlord testified that they have made requests for copies of reports and statements, but have been delayed due to privacy issues.

The landlord testified that a guest of the tenants' was involved in a break and enter, and brought back a meat cutter to the property, and was subsequently arrested. The landlord testified that there are constant signs of drug activity such as needles and trafficking as witnessed by neighbours.

In addition to the illegal activity, the landlord expressed concern about the amount of visible garbage on the property, which has resulted in multiple bylaw infractions. The landlord submitted copies of these infractions in their evidence. The landlord testified that the tenants have also caused significant damage to the property, which remains unrepaired as they have denied the landlord and their contractors access to assess and repair the damage. The landlord testified that this damage includes a smashed window and cracked tub, which is leaking water into the basement floor. The landlord testified that they had sent two plumbers to attend the property, but the tenants would not open the door. The landlord testified that someone had also tried to set a pile of garbage on fire.

The landlord testified that there is also ongoing disputes on the property between the parties which involve weapons such as pepper spray. The landlord's agent in the hearing testified that the landlord was threatened with a screwdriver when the landlord

had attempted to address the issues, and described the encounter as a “terrifying situation”. The landlord testified that there has been at least one 911 call per week.

The tenants responded that the additional parties had moved in after they were evicted from the landlord’s rental suite next door. The tenants testified that they had requested that repairs be done, but that the landlord has failed to address these repairs.

The tenants testified that the fire had taken place at the home next door, and not at the rental address, and that no charges had been laid in relation to any activity at the rental address. The tenants testified that KD was arrested by the police for missing a court date, which is an unrelated matter. The tenants testified that the home also had an ongoing pet infestation. The tenants testified that there is a shed in the back of the property that contained garbage that did not belong to the tenants.

Analysis

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.

The landlord confirmed in the hearing that they had recently served the tenants with a 10 Day Notice for Unpaid Rent. The landlord had also confirmed that they have not applied for an Order of Possession pursuant to any Notices to End Tenancy. The landlord, in their application, is attempting to obtain an early end to tenancy as they feel that the tenants have caused the landlord concern for their own safety, as well as the damage to the property.

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 landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's 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 I find that the landlord testified that the tenants were served with a 10 Day Notice to End Tenancy last month, the landlord did not make an application for an Order of Possession pursuant to that 10 Day Notice. Despite the landlord's concerns about the tenants' behaviour over many months, the landlord has not filed an application for an Order of Possession under section 55 of the *Act*. The landlord did not provide a copy of any Notices to End Tenancy that have been served on the tenants during this tenancy. The landlord's failure to pursue an Order of Possession pursuant to a 10 Day Notice or a 1 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. Although the landlord has provided supporting evidence to demonstrate that several bylaw infractions have been issued, I find that the landlord has not provided sufficient evidence to support that the tenants or their guests have engaged in illegal activity as described. I am also not satisfied that the landlord has provided sufficient evidence to show that the tenants have caused significant damage to the property, and that the risk to the landlord or property is so significant or urgent that the landlord could not wait for the standard process of obtaining an Order of Possession under section 55 of the *Act*. Similarly, I find that the landlord has failed to provide sufficient evidence of any ongoing or significant threats to the safety or lawful right of the landlord that justifies the immediate end of this tenancy. In light of the disputed claims, I find that the landlord has not met the burden of proof to support that an Order of Possession should be granted under section 56 of the *Act*.

I find that the landlord 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. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

As the landlord was not unsuccessful in this application, I dismiss the landlord's application to obtain the recovery of his filing fee from the tenants.

Conclusion

I dismiss the landlord's application in its entirety. 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: September 9, 2021

Residential Tenancy Branch