



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, OPM

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

One of the named landlords appeared for the hearing. There was no appearance on part of the two co-tenants named on the application. The landlord was affirmed and ordered to not make an unofficial recording of the proceeding.

Since there was no appearance on part of the tenants, I explored service of hearing materials upon each of the tenants.

The landlord testified that she sent the proceeding package and evidence submitted at the time of filing to the tenants in one registered mail envelope sent on December 8, 2021. The landlord testified that she confirmed the registered mail was received by the tenant referred to by initials GN. The landlord had provided a registered mail receipt, including tracking number, as proof of service. Upon search of the tracking number, I confirmed that GN had received the registered mail. Accordingly, I was satisfied that GN was duly notified of this proceeding.

Section 89 of the Act requires that each respondent be served with the proceeding package. Since the other co-tenant, referred to by initials JN, was not served I excluded JN as a named party to this proceeding.

The landlord testified that she had sent additional evidence to the tenant via registered mail on Tuesday, December 28, 2021. The landlord did not have the registered mail receipt or tracking number before her. I noted that I did not have the additional evidence before me. Where a party makes an application for an "expedited hearing", such as this one, all relevant evidence the party intends to rely upon is to be served with

the proceeding package [Rule 10.2 of the Rules of Procedure]. If this was not an expedited hearing, evidence is to be received no later than 14 clear days before the hearing. I informed the landlord that I would not review the additional evidence mailed to the tenant last week, even if I had it, due to failure to serve the additional evidence late, but that I would permit the landlord to describe the evidence orally. The landlord confirmed she wished to proceed.

I noted that the landlord had indicated on the Application for Dispute Resolution that the tenancy was set to end by way of a Mutual Agreement to End Tenancy. The landlord stated the Mutual Agreement was included in the additional evidence sent last week. I found the Mutual Agreement to be potentially relevant to making this decision and I ordered the landlord to provide me with a copy of the Mutual Agreement by uploading it to the Dispute Resolution system directly. I have reviewed the Mutual Agreement in making this decision.

Issue(s) to be Decided

Has the landlord established an entitlement to an Order of Possession?

Background and Evidence

The tenancy started on December 1, 2020. The landlord collected a security deposit of \$1000.00 and a pet damage deposit of \$500.00. The monthly rent was set at \$2000.00 payable on the first day of every month. The rental unit was described as being the upper level of a house and there is a tenanted basement suite below the rental unit.

The landlord testified that they received numerous complaints from the basement suite tenants and other neighbours concerning the disturbing behaviour of co-tenant JN.

The landlord described receiving complaints of erratic and aggressive behaviour by JN that is likely the result of mental health issues combined with use of hard drugs. The landlord submitted that JN's conduct has significantly disturbed the basement suite tenants and is damaging the property and putting the property at risk. JN's conduct includes:

- Frequent yelling, screaming, and banging sounds at all hours, including early morning hours such as 3:00 a.m. even when there is no one else around JN
- Yelling and screaming at the basement tenants
- Accusations of rape against the basement suite tenant
- Drug dealers coming to the property

- Multiple police attendance at the rental unit
- The removal of JN's children from the rental unit by social services
- Two floods that are the result of JN pulling the drain hose from the washing machine and then running the washer
- Damage to the shed door
- Setting fires in the yard even when there was a burn ban in place

The landlords compensated the basement suite tenants the equivalent of three months' rent so that they could take respite elsewhere, including staying at a hotel.

The basement suite tenant wrote a letter to the landlords dated October 6, 2021 and sent it to the landlords via email. The landlord submitted the letter as evidence.

In the letter written by the basement suite tenant on October 6, 2021, he describes JN's behaviour as including:

- Use of crystal meth
- Screaming and banging so loudly that the other neighbours called police
- Police attendance to the property approximately 20 times
- JN throwing items off the balcony including a glass aquarium
- JN ripping out the vegetable garden
- JN lighting fires in the backyard
- JN permitting her daughter to throw the two dogs and a cat into the pool
- The removal of the children from JN's home by social services

In early October 2021 the landlord approached GN about the disturbances and complaints the landlords were receiving about JN. GN and the landlord signed a Mutual Agreement to End Tenancy to be effective November 30, 2021.

Near the end of November 2021, the tenant informed the landlord that they had not found a new place to move to and asked to stay through December 2021. The landlord was willing to give the tenants more time to occupy the rental unit but told the tenant to keep looking for a new home. The landlords received a partial rent payment for December 2021.

Near the end of December 2021, the landlord spoke with GN again and heard they had not yet found a place to move to. The landlord stated that GN did not ask to occupy the rental unit through January 2022 and the landlord did not agree to allow such. The landlord did not receive any rent for January 2022.

Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a One Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 56** (1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.
- (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.

[My emphasis underlined]

Section 47 of the Act provides a mechanism for landlords to bring a tenancy to an end where the tenant has given the landlord cause to end the tenancy. A notice given under section 47 affords the tenant ten days to dispute the 1 Month Notice or at least one full move to vacate the rental unit. Section 56 also requires that the tenant has given the landlord cause to end the tenancy; however, the seriousness of the alleged offence(s) or conduct permits the landlord to have the tenancy ended without the time afforded to the tenant under section 47. Accordingly, section 56 is intended to apply in the most urgent and severe circumstances and are processed as an “expedited hearing”.

As provided under Residential Tenancy Policy Guideline 51: *Expedited Hearings*, expedited hearings are reserved for “... circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant...” The expedited process available for applications made under section 56 of the Act is not intended to permit “queue jumping” and to permit such would undermine the availability of hearings for truly emergency situations.

In this case, I have been provided evidence that the landlord and GN mutually agreed, in writing, to end the tenancy effective November 30, 2021. Upon review of the tenancy agreement, I am satisfied this was a co-tenancy. Where there is a co-tenancy, a tenancy may be ended by agreement of one of the co-tenants and it is not necessary for all co-tenants to sign a document to end the tenancy. Therefore, I find this tenancy legally ended on November 30, 2021.

I heard that the landlord agreed, at least implicitly, to permit occupancy to the tenants until December 31, 2021 based on the tenant’s statement that they had not yet found another home to move to.

Having heard undisputed evidence as to disturbance to the other tenants, which I consider to be unreasonable disturbances, I am of the view that the landlord's approach, to seek a mutual agreement to end tenancy with the tenants, was reasonable. Where a tenant does not vacate a property pursuant to a Mutual Agreement to end tenancy, a landlord's remedy is to apply for an Order of Possession under section 55 of the Act. However, the current wait time for a hearing to deal with applications under section 55 is approximately 4 to 5 months. Given the severity of disruption to the other tenants on the property and the potential for damage to the property, I accept that it would be unreasonable to wait for such a hearing and it was reasonable for the landlords to make an application for an expedited hearing and I do not consider the landlords to be trying to "queue jump" in these circumstances. I amend the application to reflect a request for an Order of Possession based on a Mutual Agreement to End Tenancy, as I am permitted to do under Rule 10.7, as I note the landlord did indicate the tenancy ended by way of a mutual agreement on the Application for Dispute Resolution. As such, I am of the view the tenant would have a reasonable expectation that the Mutual Agreement would be a matter before me.

Rule 10.7 of the Rules of Procedure provides for amending an application during an expedited hearing, as follows:

10.7 Amending an application for an expedited hearing

An application for an expedited hearing may only be amended at the hearing. Requests to amend an application made prior to the hearing will be denied.

Having amended the application, I proceed to consider whether the landlord is entitled to an Order of Possession under section 55(2)(d) of the Act as opposed to section 56. Section 55(2)(d) provides as follows:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

As stated previously in this analysis, I have reviewed the tenancy agreement and the Mutual Agreement to End Tenancy signed by the landlord and GN. I am satisfied the

parties agreed, in writing, to end the tenancy effective November 30, 2021 and I find the landlords are entitled to an Order of Possession under section 55(2)(d) of the Act. I heard the landlord permitted occupancy to the tenants through December 2021 but not for January 2022. Therefore, I provide the landlords with an Order of Possession effective two (2) days after service.

Conclusion

The landlords are provided an Order of Possession effective two (2) days after service.

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: January 04, 2022

Residential Tenancy Branch