Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord applies for an early termination of a tenancy pursuant to s. 56 of the *Residential Tenancy Act* (the "*Act*"). The Landlord also seeks return of their filing fee pursuant to s. 72.

A.D. appeared as Landlord. The Tenant did not attend, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant failed to attend the hearing, it was conducted without their participation as provided for by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that he was not recording the hearing.

The Landlord advised that the Notice of Dispute Resolution and his evidence was served on the Tenant by way of registered mail sent on January 25, 2022. The Landlord provides a proof of service showing that the Tenant signed for the application package on January 26, 2022. I find that the Landlord's Notice of Dispute Resolution and evidence was served in accordance with s. 89 of the *Act* and that it was received by the Tenant on January 26, 2022 as evidenced by her signed acceptance of the registered mail package.

Issue(s) to be Decided

1) Should the tenancy be ended early and without issuing a notice to end tenancy?
2) Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord confirmed that the tenancy began on April 15, 2020 and that rent of $1,000.00 is due on the first day of each month. The Landlord confirmed that he holds an security deposit of $500.00 in trust for the Tenant. A copy of the written tenancy agreement was put into evidence by the Landlord confirming these details.

The Landlord indicates that it had been his standard practice to conduct monthly inspections of the rental unit prior to the COVID-19 Pandemic. However, his practice lapsed until the fall of 2021 due to the COVID-19 restrictions and guidance.

The Landlord conducted an inspection of the rental unit on November 8, 2021, in which the Landlord says he discovered various damage to the property. A letter dated November 9, 2021 sent to the Tenant lists various issues to be addressed and that municipal bylaw authorities had contacted the Landlord with respect to “excessive garbage in the property”. The letter concludes with providing the Tenant until December 6, 2021 to address these issues.

The Landlord says that the issues were not addressed by the Tenant and that had attempted to conduct a subsequent inspection on December 6, 2021, however, was denied access to the property. The Landlord says that the Tenant has changed the locks for the rental unit. A letter dated December 6, 2021 was sent to the Tenant, re-emphasizing various issues that were to be addressed and that the Tenant had until January 5, 2021 to correct the deficiencies otherwise the Landlord would make an application to the Residential Tenancy Branch.

The Landlord conducted a final inspection on January 5, 2021, where the issues highlighted in the correspondence above were unaddressed and ongoing. The Landlord says that the inspection on January 5, 2021 prompted him to bring the present application.

The Landlord says that there are several issues which he says indicate that the Tenant is causing ongoing and increased property damage. These include the Tenant’s smoking in the rental unit and what he says is the consumption of illicit substances

within the rental unit. Photographs were provided by the Landlord which he says show evidence of both.

There were also issues raised with respect to the repeated changing of the locks, including the barricading of one of the rental unit's doors from the inside with a 2x4 and padlock, and the removal of smoke detectors. The Landlord is concerned that the rental unit is unsafe for habitation due to the removal of the smoke detectors and the barricading of the door, which blocks a point of egress in the event of a fire.

The Tenant continues to reside within the rental unit. The Landlord argues that waiting for a One-Month Notice to take effect would be unreasonable as the Tenant has had multiple 30-day warning letters to address these issues and the Tenant has failed to take any action. The Landlord says that the situation has only deteriorated since the initial inspection in November 2021.

Analysis

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*.

A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between these sections of the *Act* is that under s. 56 no notice is given to end the tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline 51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, sexual harassment, and pepper spraying the Landlord.

Policy Guideline 51 states the following respecting the sufficiency of evidence required to justify ending a tenancy under s. 56:

> 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:
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> - 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.

Under the circumstances, I am not satisfied that the Landlord has demonstrated that it would be unreasonable or unfair to wait for a One-Month Notice to take effect. To be sure, the activity alleged by the Landlord may give rise to the issuance of a One-Month Notice. However, the issues appear to be long-standing and have not deteriorated to a significant degree to justify ending a tenancy without issuing a One-Month Notice.

The issue of excessive garbage appears to have pre-existed the November 2021 inspection, as evidenced by the letter of November 9, 2021 which states that the Landlord had been contacted by municipal bylaw "a number of times". The long-standing nature of the issues weighs against a finding that it would be unreasonable or unfair to wait for One-Month Notice to take effect. Indeed, the Landlord could have issued a One-Month Notice sooner but elected not to do so under the circumstances.

The Landlord argues that the Tenant has been unresponsive and that it would be unreasonable to wait for a One-Month Notice to take effect given the persistent and ongoing issues. This is not sufficient to justify an order under s. 56. As mentioned above, the Landlord could have issued a One-Month Notice a number of months ago

but elected not to do so. The long-standing nature of these issues weighs against the relief sought by the Landlord.

Further, the Landlord argues that the Tenant's smoking and illicit drug consumption present continued and ongoing damage to the property. Again, this is not a sufficient basis to end a tenancy without first issuing a notice to end tenancy. Policy Guideline 51 is clear that orders under s. 56 are only for sufficiently serious incidents. Mere consumption of illicit substances or smoking does not fit within the circumstances described within the Policy Guideline.

I find that the Landlord has failed to demonstrate that it would be unreasonable or unfair to wait for a One-Month Notice to take effect. Accordingly, the Landlord's application is dismissed.

Conclusion

The Landlord has failed to establish that it would be unreasonable or unfair to wait for a One-Month Notice to take effect. Accordingly, his application under s. 56 of the *Act* is dismissed without leave to reapply.

As the Landlord's application was unsuccessful, I find that he is not entitled to the return of his filing fee. The Landlord's claim under s. 72 of the *Act* is dismissed 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: February 18, 2022

Residential Tenancy Branch