



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET FFL

Introduction

The landlord requested an order ending the tenancy and an order of possession pursuant to subsection 56(1) of the *Residential Tenancy Act* ("Act"). In addition, the landlord sought to recover the cost of the application filing fee under section 72 of the Act. (Landlord's counsel later advised that they are not seeking to recover the fee.)

A dispute resolution hearing was held, by way of teleconference, at 9:30 AM on May 20, 2022. In attendance for the landlord were the landlord's legal counsel and three witnesses. The tenant did not attend the hearing, which concluded at 9:46 AM.

Issue

Is the landlord entitled to orders under subsection 56(1) of the Act?

Background and Evidence

The tenancy began on November 15, 2021 and monthly rent is \$2,500.00. No copy of a tenancy agreement was in evidence, but I accept that there is a tenancy.

The particulars of the application referred to "activity including shots fired, aggravated assault, kidnapping, drug trafficking, and sexual assault. At this property alone, 25 calls for violent or criminal activity since September 2021. These activities are ongoing."

Counsel submitted that there has since been a fire at the rental unit (a house) which has rendered the property uninhabitable and "completely unlivable." The electricity has been cut off, the gas is about to be cut off, the water has been shut off, and the property is boarded up and fenced off. A demolition permit was, or is about to be, issued by the municipality and demolition of the property is to begin next week.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

While the particulars in this application initially pertained to the then-appropriate relief available under subsection 56(1) of the Act, the more recent set of facts pertaining to the fire and uninhabitability of the property leads me to find that the application is more appropriately made under section 56.1 of the Act. While the sections are, of course, distinct and separate, the outcomes are the same. The facts of this application more appropriately support an application ending the tenancy under section 56.1 of the Act.

For these reasons, I exercise my discretion to amend the application (from a claim for relief under section 56(1) of the Act to a claim for relief under section 56.1 of the Act) pursuant to Rule 10.7 of the Residential Tenancy Branch's *Rules of Procedure*.

Section 56.1(1) of the Act states that

A landlord may make an application for dispute resolution requesting

- (a) an order ending a tenancy because
 - (i) the rental unit is uninhabitable, or
 - (ii) the tenancy agreement is otherwise frustrated, and
- (b) an order granting the landlord possession of the rental unit.

Section 56.1(2) of the Act states that

If the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order

- (a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and
- (b) specifying the effective date of the order of possession.

In this application, the facts are such that I find the rental unit uninhabitable and that the tenancy agreement is frustrated. To this end, I order that (1) the tenancy agreement is deemed to have ended on May 20, 2022 and (2) that the order of possession will have an effective date of two days from the date of service of that order of possession. An order of possession is issued in conjunction with this decision, to the landlord.

Conclusion

IT IS HEREBY ORDERED THAT, PURSUANT TO SECTION 56.1 OF THE ACT:

- 1. the landlord's application is granted;**
- 2. the tenancy is ended effective immediately; and,**
- 3. the landlord is granted an order of possession of the rental unit.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: May 20, 2022

Residential Tenancy Branch