



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This expedited hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end of the tenancy and Order of Possession pursuant to section 56; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of hearing and evidence by posting on the rental unit door on June 24, 2022. Based on the undisputed evidence I find that the tenant is deemed served with the landlord's materials on June 27, 2022, three days after posting, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an early end of the tenancy and Order of Possession?
Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

The landlord gave undisputed evidence on the following facts. The landlord testified that this tenancy originally began in 2020. The current monthly rent is \$2,900.00 payable on the last day of the previous month. A security deposit of \$1,450.00 was collected and is still held by the landlord. The rental unit is a townhouse situated on the ground floor of a multi-unit, strata-managed complex with approximately 220 suites in the property.

The landlord testified that they have previously issued a 10 Day Notice to End Tenancy for Unpaid Rent dated May 20, 2022 indicating an arrear of \$2,900.00 which the tenant did not file an application to dispute. The parties subsequently signed a Mutual Agreement to End Tenancy giving an end of tenancy date of May 31, 2022. Copies of the 10 Day Notice and Mutual Agreement were submitted into evidence.

The landlord now seeks an early end of the tenancy and submits that the tenant has set up a tent-like structure on their patio area which they believe to be a fire hazard. In addition the landlord gave evidence of multiple strata bylaw warnings and fines or infractions including keeping doors open and failing to remove visible coverings on their patio.

The landlord believes that the structure on the patio area is a fire hazard and has submitted into evidence a historic article about a fire that occurred in 1981 as an example of the possible consequence should the tenancy not end.

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 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

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.

Based on the evidence submitted I am not satisfied that the landlord has met their evidentiary burden to demonstrate a basis for an early end of this tenancy. I find the presence of a tent-like structure on the patio is not reasonably characterized as a jeopardy to health or safety or a risk to the property. I find the landlord's concern that the structure poses a significant risk to not be supported in the evidence and be hyperbolic in nature. The landlord's own submission are predicated on danger caused by, what I determine to be, remote possibilities that have little evidence to demonstrate they are likely to occur.

While it is certainly reasonable that "if the concrete slab of the patio failed and collapsed" the debris may pose a risk to those below or that a fire may travel through an elevator shaft, I find the initial risk of the patio failing or a fire starting to have little evidence showing they are reasonable concerns.

I further find that the nature of the various warnings and infractions cited in the correspondence from the strata corporation appear to be for issues such as an incident of excessive noise or a vehicle being parked in the incorrect stall. I find that the warnings about the tenant allowing others to access the rental property to be insufficient to determine that there is a significant risk or interference with safety.

I also note that the parties have signed, what appears to be, a valid Mutual Agreement to End the Tenancy and the landlord has issued a Notice to End Tenancy. The landlord testified that they have chosen to file the present expedited application in an attempt to circumvent the time it would take to file an application for an Order on a different basis. I find no reason that it would be unfair, unreasonable or unjust for the landlord or other occupants of the property to wait for a notice to take effect.

I find the landlord has not met their evidentiary burden on a balance of probabilities. I find insufficient evidence that there has been any conduct on the part of the tenant that could reasonably be characterized as an interference, jeopardy or risk to the property or others that would give rise to an end of the tenancy. I further find little evidence that it would be unreasonable, unfair or unjust to anyone to wait for a notice under another section to take effect. Consequently, I dismiss the application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. 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: July 7, 2022

Residential Tenancy Branch