



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Yuanheng Broadway View Developments
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

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

1. An early end to the tenancy and an Order of Possession pursuant to Section 56 of the Act; and,
2. Recovery the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Legal Counsel, Property Manager, and Office Manager attended for the Landlord, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord testified that they personally served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on July 21, 2022 (the "NoDRP package"). The Landlord also posted the NoDRP package on the Tenant's door. Legal Counsel advised that the documents were also emailed to the Tenant. The Tenant confirmed receipt of the Landlord's NoDRP package. I find that the Tenant was served with the NoDRP package on July 21, 2022 in accordance with Section 89(1)(a) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an early end to the tenancy and an Order of Possession?
2. Is the Landlord entitled to recovery the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on September 22, 2021. The fixed term ended on March 21, 2022, then the parties were going to enter into a new fixed term tenancy. Rent is \$66,000.00 for six months. A security deposit of \$5,500.00 and a pet damage deposit of \$5,500.00 were collected at the start of the tenancy and are still held by the Landlord. The parties have a hearing set for October 6, 2022 where the Landlord is seeking an Order of Possession for unpaid rent/utilities and a Monetary Order for unpaid rent/utilities.

The Landlord is seeking to end this tenancy early. The Landlord's written submissions state:

3. *On June, 15, 2022, the Landlord performed an inspection of the Unit and discovered:*
 - a. *unauthorized individuals occupying the Unit;*
 - b. *damage to the Unit and its contents;*
 - c. *evidence of smoking; and,*
 - d. *feces on the premises.*
4. *The Landlord is seeking an expedited hearing for (a) an order that the tenancy has ended early; and/or (2) an order of possession of the Unit on the basis that:*
 - a. *the tenant has put the landlord's property at significant risk; and/or*
 - b. *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*

A letter dated August 3, 2022 from Tenant's Legal Counsel states that "[Landlord's Legal Counsel] and I agreed to adjourn the hearing of this matter to a mutually agreeable date. The dates that we are both available for the reconvened hearing are August 11, 16, or 19."

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.

Section 56 of the Act establishes the grounds for which the Landlord may make an application for dispute resolution to request an Early End to Tenancy and 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.

To end a tenancy early and issue an Order of Possession under Section 56, the Landlord has the burden of proving that there is sufficient cause to end the tenancy such as:

- 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 interest 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,
 - 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;
- caused extraordinary damage to the residential property, **and**

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.

Adjournment

RTB Rules of Procedure 7.8 and 7.9 provide me the authority to adjourn hearing proceedings and read as follows:

7.8 Adjournment after the dispute resolution hearing begins: *At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.*

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment: *Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I read and considered both parties written submissions in this matter. I found the written submissions helpful in understanding the context of the claims of the parties. I do not find that an adjournment would result in a resolution of the matter; however, I am mindful that this application was advanced through the expedited hearing process which is reserved for those matters of extreme urgency. This is discussed below.

I decline to grant an adjournment for this expedited hearing application. I find that if this matter was of the utmost urgency, it should not be adjourned in any case. RTB Rules of Procedure 10 do not even discuss adjourning expedited hearings as it goes counter against the reasons the process was implemented in the first place.

Expedited Hearing

Expedited hearings are reserved for applications of a very urgent matter, and that it would be unfair for the applicant to wait for a regular hearing time. The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits. RTB Rules of Procedure 10 set out the expedited hearing process.

RTB Policy Guideline #51-Expedited Hearings is intended to assist parties understand issues that are likely to be relevant in an expedited hearing. It states:

...

In extremely urgent cases, the director may set the matter down to be heard as soon as six days after the application is made subject to an available hearing slot. The director has the discretion to decide what constitutes an extremely urgent case. In general, these are cases where there is a demonstrable immediate danger or threat. For example the director may determine a case is extremely urgent and set it down early if:

- a tenant has assaulted the landlord and there is sufficient evidence provided with the application (such as a video recording of the assault, witness statements, or a statement from a police officer), or*
- a tenant has been rendered homeless by the landlord who has illegally locked out the tenant and there is sufficient evidence provided with the application (such as witness statements, or a statement from a social worker).*

This matter was set down 36 days after the application was made. Legal Counsels both agreed to seek an adjournment of this matter to fit in their schedules. Written submissions by Landlord's Legal Counsel do not set out circumstances where there is imminent danger to the health, safety, or security of the Landlord. I do not find that the matter outlines demonstrable immediate danger or threat to other occupants or the Landlord.

I understand there are unpaid rent issues, but this is not a matter that would be set down for an early end of tenancy, and the parties do have that matter scheduled in October 2022. I find that it would not be unreasonable, or unfair to the Landlord, to wait for a notice to end the tenancy under Section 47 of the Act to take effect for the causes

the Landlord are claiming are reasons to end this tenancy early. I dismiss the Landlord's application without leave to re-apply, and the tenancy will continue until ended in accordance with the Act.

As the Landlord was unsuccessful in their claim, they must bear the cost of the application filing fee.

Conclusion

I dismiss the Landlord's application to end this tenancy early and to recover the application filing fee. The tenancy will continue 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 Act.

Dated: August 05, 2022

Residential Tenancy Branch