Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on June 30, 2022 seeking an order for early termination of the tenancy, and reimbursement of the Application filing fee. This is an expedited hearing process, filed by the Landlord on an emergency status, on the basis that the Tenant poses an immediate and severe risk to the property, other occupants, or the Landlord.

The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on August 5, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the hearing; the Tenant did not.

Preliminary Matter – service of Notice to the Tenant

The Landlord stated they delivered notice of this hearing to the Tenant via email on July 14, 2022. The Landlord presented this was an established method of email communication, one they used with the Tenant since the beginning of the tenancy. In their evidence, the Landlord provided copies of one email showing that they sent the Notice of Dispute Resolution Proceeding; a second email shows they sent "supporting documents that we will be discussing at the hearing" (*i.e.*, their evidence).

A response from the Tenant on July 15, 2022 shows they understood the hearing had yet to take place, and the Landlord re-stated the scheduled hearing date of "Aug 5th".

From what the Landlord presented here on notifying the Tenant via email, I am satisfied they served the Tenant notice of this hearing, as stated, on July 14, 2022. This was within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch on July 13, 2022. As per s. 44 of the *Residential Tenancy Regulation*, I deem the notice received by the Tenant on July 17, 2022, on the third day after it was emailed.

I find the Landlord completed service as required by the *Act* and the *Residential Tenancy Branch Rules of Procedure*. The hearing thus proceeded in the Tenant's absence.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession that ends the tenancy for cause and without notice by s. 56 of the *Act*?

- Is the Landlord entitled to reimbursement of the Application filing fee, as per s. 72 of the *Act*?

Background and Evidence

I have reviewed the oral testimony and documentary evidence before me; however, in this section I describe only the evidence and submissions relevant to the issues and findings in this matter. That is, I consider only material that is relevant to the Landlord's application for an early end of tenancy. After affirming an oath with the Landlord at the start of the hearing, I gave them the opportunity to speak to the issue and present their evidence.

The Landlord confirmed the details of the tenancy agreement they provided as evidence for this hearing. The start date was October 1, 2021. The Tenant pays $4,200 at the start of each month. Both the Landlord and Tenant signed the agreement on September 23, 2021.

The Landlord presented the following points that they feel show the Tenant poses a risk. These are letters from the strata including the following:

- May 3, 2022: use of parking not designated to the Tenant

- May 3, 2022: separate instance of parking in a stall not designated to the Tenant
- May 9, 2022: use of parking not designated to the Tenant
- May 9, 2022: use of parking not designated to the Tenant (second infraction on same day)
- May 9, 2022: Tenant as pet owner “did not clean up a mess left by the dog in the parkade”
- May 30, 2022: use of parking not designated to the Tenant
- May 31, 2022: failure to stop and wait for parkade door to completely close – security advising the Tenant of this infraction was “met with anger, hostility and vulgar language”
- May 31, 2022: exceeding the speed limit within the parkade
- April 20, 2022: boxes stacked in hallway outside of rental unit “which could be a potential fire hazard.”

The Landlord included emails to them from the “Community Director” as well as the site developer who informed the Landlord about the Tenant’s parking infractions. The Landlord messaged the Tenant about their second vehicle that is parked in other non-designated areas. The strata council fined the owner on June 22, 2022 for a combination of bylaw infractions.

In the hearing the Landlord outlined how the Tenant’s vehicle was towed one time in June. From this, the Tenant was “quite harsh to the manager of the building” and “threatening”.

The Landlord also served a One-Month Notice to End Tenancy for Cause on June 22. Additionally, the Tenant was not paying rent as established in the tenancy agreement, and for this the Landlord served 10-Day Notices to End Tenancy for Unpaid Rent. The Landlord presented that their ongoing communication with the Tenant on various matters was met with derisive and “threatening” text messages. Additionally, the Landlord was aware of criminal matters involving the Tenant.

The Tenant did not attend the hearing and did not submit documentary evidence for consideration.

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

> 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 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.

The following s. 56(2) sets out two criteria. First, a landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to a landlord to wait for a set-period Notice to End Tenancy to take effect under a different s.47 of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

> 56(2) . . .
> (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 . . .

I have considered the evidence of the Landlord concerning the conduct of the Tenant.

The *Act* s. 56 is reserved for situations where a tenant commits a serious breach. I find the Tenant's conduct described by the Landlord is not on a level with what is set out in s. 56(2).

While the landlord presents that certain of the actions they have received strata warnings about constitute serious infractions, I am not satisfied this equates to the

tenants' actions seriously jeopardizing the health or safety of other individuals. Nor do those actions equate to significant interference with or unreasonable disturbance of other occupants or the landlord – those are matters more properly addressed with a One-Month Notice to End a Tenancy for Cause. Further, separate criminal matters that may involve the Tenant here (or the Tenant's own purported "status" involving such activity) does not equate to illegal activity.

The most serious infraction involves driving behaviour in the building area that must be strictly regulated. I agree that the speeding in the parking garage poses some risk; however, the Landlord did not provide sufficient evidence showing positively that the Tenant engaged in this behaviour to the extent that it posed a serious risk to health or safety of others.

In conclusion, I find the evidence presented here on the Tenant's actions does not rise to a level that is sufficient to end the tenancy in this manner. This is based on the evidence presented by the Landlord in this hearing.

I understand the issue of the Tenant's clearly rude, brazen, care-free behaviour presents difficult circumstances for the Landlord and other individuals in the building. Given the section of the legislation the Landlord has applied on to end the tenancy, an imminent danger with palpable effects is not proven in the evidence. The Landlord has not shown that this means of ending the tenancy must happen over and above that of other sections applicable in the *Act*.

An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or others, so significant that it would warrant the tenancy end sooner than had the Landlord issued a One Month Notice to End Tenancy for Cause. I find that the evidence and oral testimony presented by the Landlord does not show this to be the case.

I find the Landlord has not proven there is a valid reason to justify an order that ends the tenancy early by application of s. 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a s. 47 one-month Notice to End Tenancy.

Conclusion

I dismiss the Landlord's Application for an early end of tenancy and an order of possession, without leave to reapply. Because the Landlord was not successful in this Application, I make no award for reimbursement of the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 10, 2022

Residential Tenancy Branch