



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on August 2, 2022 seeking an order for early termination of the tenancy. 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 25, 2022. In the conference call hearing, I explained the process and provided the attending parties the opportunity to ask questions.

At the start of the hearing each party confirmed they received the prepared evidence of the other. On this basis the hearing proceeded as scheduled.

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 recover the filing fee for this Application pursuant to 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 to the tenancy for cause. After taking an oath from each party present, I gave them the opportunity to speak to the issue and present their evidence.

The parties confirmed the details of the basic tenancy agreement in place. This was a verbal agreement for the tenancy starting on November 1, 2021. The rent amount was \$3,800 payable on the first day of each month, and the Tenant paid a security deposit of \$1,900.

According to the Landlord, the Tenant contacted them in October to state their prior tenancy was ending, and they needed a place urgently. The Landlord indicated a short-term availability of this rental unit for approximately 6 months. The Landlord tried to write a tenancy agreement; however, the Tenant insisted they had known each other a long time and there was no need for a tenancy agreement on paper.

Specific to this matter, the Landlord stated there was no verbal agreement in place regarding subletting of the rental unit.

The Tenant explained that the Landlord knows about this Tenant's business, which is subletting rental units. They had another agreement for another property in place with this Landlord previously, and at one point the Landlord stated 'I have another property (i.e., this rental unit)'; therefore, the Landlord was fully aware of what the Tenant would do with regard to subletting individual rental units within the property to sub-tenants. The Tenant here stated they informed the Landlord at the start of this tenancy that they would be subletting to 6 other people.

The Landlord insisted that they were aware of the Tenant subletting; however, in the agreement this meant the Tenant had to also stay as an occupant in the rental unit property. Also, the Landlord required the subtenants' names and basic information, which the Tenant did not provide.

The Landlord maintains that the Tenant here changed the structure within the rental unit. The Tenant responded to say they undertook some renovations at the start of this tenancy of which the Landlord was aware; that was even part of the agreement between the parties.

The Landlord explained there were two occasions for the police to visit. One incident had the Landlord pushed to the ground in the yard at the rental unit property. The second call to the police from the Landlord was in regard to two of the sublets in the

rental unit property alternating their living arrangement in one single room. The Landlord contacted the police to report this as fraud.

The Landlord also served a One-Month Notice to End Tenancy for Cause on June 30, 2022, giving the end-of-tenancy date as July 31, 2022. The reasons for this, as provided on that document in their evidence, is the Tenant subletting to others, and the Tenant having an unreasonable number of occupants in the rental unit. The Tenant acknowledged that they received this document and did not apply to challenge this One-Month Notice in a dispute resolution process.

The Landlord also presented what they deemed a risk in this situation. There was the element of the Tenant's fraud involving subtenants, to which the police advised the Landlord to proceed with an eviction through the Residential Tenancy Branch. Also, there was a lack of a legal permit to make changes to the structure of the rental unit property; for this, the Landlord received complaints from neighbours. They also pointed to the lack of a clear fire escape, with 11 people (by their count) living in the rental unit property, with one bathroom and one half-bathroom for all of those subletters.

The Tenant in the hearing clarified the number of people living in the rental unit. There is a window for each room that opens on to the ground level. They erected walls within the rental unit with the Landlord's permission and this was at the start of the tenancy.

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.

Then, s. 56(2) sets out two criteria. First, the Landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the 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 here.

The Landlord here presents the Tenant is jeopardizing the health or safety of the subtenants at their rental unit. This involves access to a fire escape in the event of an emergency. The Landlord did not present sufficient evidence to show the hazard involved in the current set-up in the rental unit property. Further, there is no evidence that the Landlord told the Tenant of this element of risk at the property. I discount the Landlord's presentation of this risk situation for this reason, chiefly the lack of evidence.

Without showing this risk, the Landlord is relying on the simple fact that there are too many people in the rental unit. This is more properly the subject of a One-Month Notice, and in fact the Landlord did serve such a notice to the Tenant already for this reason.

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 submitted the situation was one of a hazard, I am not satisfied the situation is that where the Tenant's actions seriously jeopardized the health or safety of an individual. It is not proven in the evidence that there is a situation of risk involving either the number of subtenants occupying the rental unit property, or the set-up in that rental unit property.

I acknowledge this is a situation that presents legitimate concern for the Landlord; however, immediately ending a tenancy must be the result of something that is *urgent* with a situation of risk, and/or related to *extraordinary* damage.

In conclusion, I find the evidence presented here on the Tenant's behaviour 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.

An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a Landlord or Tenant, 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.

Because the Landlord was not successful in this application, they are not entitled to a return of the application filing fee.

Conclusion

I dismiss the Landlord's application for an early end of tenancy and an order of possession for the rental unit, without leave to reapply.

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 30, 2022

Residential Tenancy Branch