



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an early end to the tenancy and an Order of Possession pursuant to Section 56 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent and Legal Counsel attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent, Legal Counsel and I were the only ones who had called into this teleconference. The Landlord's Agent and Legal Counsel were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Agent and Legal Counsel that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Agent and Legal Counsel testified that they were not recording this dispute resolution hearing.

The Landlord served the Notice of Dispute Resolution Proceeding package for this hearing to the Tenant by posting the notice on the Tenant's door on September 23, 2022 (the "NoDRP package"). The Landlord uploaded a Proof of Service Notice of Expedited Hearing Dispute Resolution Proceeding #RTB-9 form attesting to service of the NoDRP package. I find that the Tenant was deemed served with the documents for this hearing three days after posting, on September 26, 2022, in accordance with Sections 89(2)(d) and 90(c) of the Act.

Issue to be Decided

Is the Landlord entitled to an early end to the tenancy and an Order of Possession?

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 Landlord's Agent testified that the Landlord took possession of the residential property in 2020. The Tenant was an existing resident in the residential property at that time. The Landlord's Agent believed the Tenant's oral tenancy began in 2018. Monthly rent is \$400.00 payable on the first day of each month. No security deposit or pet damage deposit was collected at the start of the tenancy.

Legal Counsel described the property as a three floor building built onto a hill. The front faces a main road and is the site of the restaurant entrance. There are apartments on the second and third floor of the building above the restaurant. The building's main sewer drain is located directly under the Tenant's rental unit. Additionally, the remaining second floor apartments' drainage run under the Tenant's suite.

The building manager's affidavit sets out the circumstances in this building as:

In or around 2019, the main culvert under [name] Street that ran parallel with the building collapsed and the entire street was washed out. The City had to close access to repair the street and the drainage culvert. As a result of this incident, the settling of the building has sunk around 10-12 inches. Because of this settling of the building, there is not enough slope to adequately drain the water and sewage from the building. Consequently, the water and sewage backs up from the drain and leaks from the Respondent's bathroom down into the Restaurant.

Legal Counsel submitted that the issue is exacerbated, not by something that the Tenant has done, but rather what the Tenant is preventing from being done. The Landlord's Agent testified that renovations are unable to happen under the Tenant's suite as he does not want to move out of the rental unit which is preventing the fix to the

problem. Legal Counsel submits that access under the Tenant's rental unit is needed to increase the level of the slope of the pipes as the settling of the front of the building has made it inadequate to drain the sewage flow.

The restaurant manager's affidavit talks about the leakage problems and how it is interfering with the business in the restaurant below the Tenant's rental unit. A plumbing contractor's recommendation after an emergency call in February 2022 states:

... As a result of a culvert cave in on [name] Ave. The front of the building has settled almost 12" lower, so either raise the front end of the building (way too expensive), or a) Add a sump pump unit to assist on a continuous basis the drainage for all the suites on the 1st level, or trench and lower connection at the back of the building to create decline. With either option all the plumbing connects under the bathroom in unit #[#]. The floor needs to be removed and universal connections need to be replaced and change pipe and diameter. Plumber suggested raising the entire floor in suite #[#] and adding a sump pump. Problems will persist and cause more damage. This must be done before winter because water settling in the pipes due to poor drainage will freeze and continue to break pipes – same as what happened last year.

It was discussed whether some kind of settlement arrangement had been broached with the Tenant. The Landlord's Agent said another suite had been offered by another agent of the Landlord to the Tenant but that he declined to accept it. The Landlord's Agent in the hearing said when he spoke to the Tenant, the Tenant told him he would think about it. The Landlord's Agent stated that the Tenant can move back into the rental unit after the repairs are completed.

The Landlord has known about the problem for sometime, and at least from February 2022. The Landlord has a sense of urgency to get this work completed before winter sets in.

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.

A Section 56 application is for very serious breaches only. RTB Policy Guideline #50-Expedited Hearings discuss the types of emergency matters that would be considered in this type of claim. Policy Guideline #50 states:

An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

Further, the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Section 56 states:

Application for order ending tenancy early

- 56** (1) *A landlord may make an application for dispute resolution requesting*
- (a) *an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and*
 - (b) *an order granting the landlord possession of the rental unit.*
- (2) *The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,*
- (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, and*
- (b) *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.*
- (3) *If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy. (emphasis mine)*

Section 56(2)(a) inquires about what the Tenant has done, not what the Tenant has not done. Legal Counsel submitted that the Tenant has not done anything specified under Section 56(2)(a)(i) to (v); however, 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 as the needed repairs are very urgent.

Sections 56(2)(a) and 56(2)(b) work in conjunction. Both are required to be proven by the Landlord for an early end of tenancy and an Order of Possession to be granted. I do not find that the Landlord has proven on a balance of probabilities that the Tenant has

done something so egregious that I would grant an early end of tenancy and an Order of Possession. I dismiss the Landlord's application.

I understand there are serious structural issues for this residential property and if the Landlord needs vacant possession, the Landlord may consider an application for possession for renovation under Section 49.2 of the Act. The most practical way forward, as I see it, is for both parties to negotiate.

Conclusion

The Landlord's application is dismissed. 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: October 07, 2022

Residential Tenancy Branch