



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

The landlord was represented by their agent, JN ("landlord"), in this hearing, as well as their legal counsel MG. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application and evidence package. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant duly served with the landlord's Application and evidence. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on October 1, 2019, with monthly rent set at \$3,350.00, payable on the first of the month. The landlord holds a security deposit of \$1,650.00.

The landlord filed this application after an incident took place on October 5, 2022. The landlord received a phone call from a police officer using the tenant's cell phone informing the landlord that the tenant was attempting to break into the home, and requested that the landlord attend the home immediately. The landlord provided in evidence the police file number, as well as the officer's contact information.

The landlord testified that they attended the home at approximately 6:00 p.m., and arrived to see eight police vehicles at the home. The landlord provided a statement in evidence where they described what they saw when they entered the home. The landlord testified that the home was very messy, and that there were multiple holes in the doors, as well a missing smoke detector, and exposed wires.

The landlord testified that the police had informed them that the occupants in the home were dealing drugs. The landlord also discovered from a neighbour that there was an overdose death in the home. Furthermore, the landlord discovered that the basement suite was rented out to a tenant whom the landlord did not know.

The landlord testified that the locks have been changed, and no keys have been provided to the landlord. The landlord testified that the tenant had also cancelled the electricity to the home.

The landlord obtained three written statements, which were submitted in evidence, from concerned neighbours. The landlord testified that they were afraid of being identified as they were afraid of the occupants in the home.

The tenant attended the hearing, and does not deny that an overdose did take place in the home. The tenant testified that they had been residing there for three years with no issues, and that there as an accidental overdose in March 2022. The tenant testified that since the overdose they had started to spend more time away from the home as they had difficulty being around the home after the death.

The tenant denies subletting the home, and testified that they did have roommates who helped to pay the rent. The tenant also denies that the home was unclean or trashed, and that there were multiple holes in the doors or walls. The tenant also denies that drug dealing has taken place on the property.

The tenant testified that on October 5, 2022, they were locked out, and was attempting to gain entry through a window. The tenant testified that there was a misunderstanding, and the police attended as they thought an active break-in was in progress. The tenant testified that the locks were changed after an argument between them and another occupant. The tenant confirmed that the hydro was no longer in their name, but other utilities like gas and internet were.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, 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.

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord provided sworn testimony, as well as submitted in evidence, a written statement as well as statements from neighbours expressing concern about the behaviour of the tenant and occupants in the home.

The tenant has not been served with a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, nor has the landlord applied for an Order of Possession pursuant to any Notices to End Tenancy. The landlord, in their application, is attempting to obtain an early end to tenancy as they feel the tenant, and occupants the tenant has allowed into the home, have caused not only extraordinary damage to the home, but have engaged in disturbing behaviour that the landlord believes to be associated with drugs and other illegal activity, and have caused neighbours to be fearful.

The landlord expressed concern about the fact that there were multiple disturbing incidents that have taken place in the home, including an overdose death, the attendance of police on October 5, 2022, as well as behaviour that leads the landlord to believe that the tenant no longer resides in the home at all, including the changing of the locks, the tenant attempting to break into the home, the cancelling of the hydro, and receiving a text message from a new tenant in the basement suite the landlord knew nothing about.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although I find that the landlord did refer to what they believed to be multiple breaches of the tenancy agreement, including subletting and changing the locks without the landlord's permission, the landlord has not issued the tenant any 1 Month Notices to End Tenancy for Cause. The landlord's failure to pursue an Order of Possession pursuant to a 1 Month Notice does not automatically qualify them to apply under section 56 of the Act. Although the landlord has provided supporting evidence to demonstrate that the police have attended at the property, I find that the landlord has not provided sufficient evidence to support that the tenant, or any occupants or guests of the tenant, have engaged in illegal activity that has jeopardized the lawful right of the landlord or other occupant. I also note that in light of the disputed testimony about the damage and holes inside the home, the landlord has not provided sufficient evidence to support the extent or existence of the significant damage referenced in this application, whether that be in the form of photos or videos of the damage, or witness testimony or statements.

Although some of the incidents and behaviour described in this application do raise some concern about whether the tenant is in fact still residing in the home, I find that the landlord has failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. I am not satisfied that the landlord has established that there are immediate threats to the property, or safety of anyone on or near the property, if the landlord was to apply for an Order of Possession through the normal process after issuing a Notice to End Tenancy for Cause. For these reasons, I dismiss the landlord's application for an early end to this tenancy without leave to reapply.

As the landlord was not unsuccessful in this application, I dismiss the landlord's application to obtain the recovery of his filing fee from the tenant.

Conclusion

I dismiss the landlord's entire application without leave to reapply. This tenancy is to 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 *Residential Tenancy Act*.

Dated: November 22, 2022

Residential Tenancy Branch