



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding SUMMIT CIRCLE DEVELOPMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

Two agents appeared for the landlord. A representative appeared on behalf of tenant AK.

The landlord's agents testified that the proceeding packages and evidence was served upon the tenants by attaching the materials to the rental unit door on February 25, 2023. The tenant's representative confirmed that she received a copy of the hearing materials from AK. I was satisfied the hearing materials were served in a manner that complies with the Act and I continued to hear this case.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and be provided an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy started on August 1, 2022 and the tenants paid a security deposit of \$1200.00 and a pet damage deposit of \$1200.00. The monthly rent of \$2400.00 is payable on the first day of every month.

The rental unit is a three bedroom townhouse style unit located in a 29 unit complex owned by the landlord.

Landlord's position

The landlord seeks to end the tenancy early on the basis there is drug use and drug sales taking place at the rental unit, drugs have been found in common areas of the property which pose a risk to other occupants of the complex, and people in the unit that have threatened the landlord's agent with physical harm.

The manager testified that on September 3, 2022 another tenant complained to the manager that a baggie of drugs was found on the sidewalk near her unit and the rental unit. The complainant was very concerned as she has three children under six years old and feared what could have happened had one of her young children found the drugs. The male tenant acknowledged that the drugs were his and promised this would not happen again. However, approximately one week later drugs were found outside again and tenant AK apologized and promised it would not happen again.

Subsequent to that, other tenants complained to the manager that there were many suspicious people and activities taking place at the rental unit. People would come into the back yard of the rental unit, go to a shed in the backyard, and leave shortly afterwards. This activity took place at all hours of the day and night. Also, people were observed openly smoking crack in the back yard.

The manager notified the tenant AK that an inspection would take place on February 3, 2023. Upon entry, the landlord's agent found a crack pipe on the kitchen table, tiny baggies typically associated with drug sales were found in the pantry, a bottle of a white powder was also seen in the pantry. On the wall was a white board that had instructions on how to operate a drug selling business, including instructions to lock the door, use only three baggies, etc. In the master bedroom "bongs" were found and in the second bedroom small cups with white powder were found along with prescription drug containers with the patient's names removed. The front door was barricaded with pieces of lumber. In the shed, and on the ground of the backyard, the landlord found more of the tiny baggies.

After the inspection, the manager contacted the police. The police asked for photographs of what the landlord found. The police confirmed what the landlord found was drugs and that this unit was a known drug house.

On February 7, 2023 the landlord issued a One Month Notice to End Tenancy for Cause with an effective date of March 31, 2023. The tenants did not file to dispute the One Month Notice.

On February 10, 2023 the owner of the corporate landlord was at the property to tend to another unit in the complex and observed people arriving at the rental unit and purchased drugs. The owner went to the rental unit to investigate further and a man who was not a tenant came to the door and threatened to beat up the owner.

The manager, who resides on site, stated she is afraid to let her children out in the common areas due to the activity and people associated to the rental unit.

The landlord's agent argued that the drug sales appears to be run by an organized gang and the landlord's staff are afraid. In addition, the landlord has lost three other tenants due to the high risk these activities are posing to them and their children. The landlord's agent described the complex as being mostly families with children and pets.

Given the significant risk to the landlord's staff and other occupants of the complex, the landlord is of the position it cannot wait for the One Month Notice to take effect.

In addition to the testimony, the landlord provided a copy of the tenancy agreement; the One Month Notice; a screen shot of the communication the manager had with the police; and, photographs taken during the inspection of February 3, 2023.

Response from AK's representative

The representative acknowledged that the people occupying the rental unit, including the representative's daughter who rents a room from the tenant, have issues with substance use; however, possession of drugs is no longer illegal and there are many people in this neighbourhood who use drugs. The representative testified that she has been to the rental unit a few times and she has seen the white board, although there was nothing written on it when she was there.

The representative believes that a former roommate was likely responsible for the issues taking place in the rental unit; however, that person has since moved out. The representative did not know when that person moved in or moved out of the rental unit but stated that a different couple moved in just last week. The representative is of the view the rental unit is getting cleaned up now that the other roommate has moved out.

The representative suggested the shed is a common shed used by a number of people. The landlord's agent responded that the shed was brought into the exclusive use backyard of the rental unit by the tenants.

Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a One Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 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 the 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.
- (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.

[My emphasis underlined]

Section 47 of the Act provides a mechanism for landlords to bring a tenancy to an end where the tenant has given the landlord cause to end the tenancy by serving the tenant with a One Month Notice to End Tenancy for Cause. A notice given under section 47 affords the tenant ten days to dispute the One Month Notice or at least one full month to vacate the rental unit. Section 56 also requires that the tenant has given the landlord cause to end the tenancy; however, the seriousness of the alleged offence(s) or conduct permits the landlord to have the tenancy ended without the time afforded to the tenant under section 47. Accordingly, section 56 is intended to apply in the more urgent and severe circumstances and are processed as an “expedited hearing”.

In the matter before me, the landlord submitted unopposed evidence that there is open drug use and drug sales that have been taking place at the rental unit which includes drug purchasers coming and going from the property at all times of the day and night. I was also presented with unopposed evidence that drugs have been left or dropped on common property where other people, including children, have or may find them. I accept that such activity is unreasonably disturbing and significant interference to the other occupants’ use and enjoyment of the property and that it puts the health and safety of other occupants, including children, at significant risk should they come into contact with the drugs left or dropped in common areas.

While it was suggested by the tenant’s representative that the more significant issues, which I infer to mean drug sales, may have been the result of a roommate of the

tenant(s), a tenant is ultimately responsible for the activities and actions of any person they permit on the property. In other words, a tenancy may be ended where a tenant's roommate has done something to warrant ending the tenancy. Accordingly, I find it unnecessary to distinguish whether the drug use, drug sales or leaving of drugs on common property were the result of the tenant's actions or that of their roommate or guest.

While the tenant's representative suggested drug possession is not illegal anymore, the legality of the drug possession is not determinative. Rather, what is before to determine is whether the drug use, drug possession, and/or drug sales are unreasonably disturbing other occupants on the property (including the landlord's agents) and/or putting the other occupants' health and safety at significant risk.

Given the unopposed evidence before me, I am satisfied that the tenants have given the landlord cause to end the tenancy due to unreasonable disturbance, significant interference of lawful use of the common areas, and putting the health and safety of other occupants or the landlord at significant risk.

The issue then becomes, is the situation so urgent and severe that the tenancy must be ended before a One Month Notice can take effect.

The landlord did issue a One Month Notice on February 7, 2023 and the tenancy is set to end on March 31, 2022 based on that undisputed One Month Notice; however, I heard undisputed testimony that on February 10, 2023 the owner of the landlord was threatened with physical harm by a man who came to the door of the rental unit. Given this subsequent event, I am of the view the situation deteriorated even further after issuance of the One Month Notice since an explicit threat was made to the owner and I find that it is unreasonable to wait for the One Month Notice to take effect.

In light of the above, I grant the landlord's application and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants. The Order of Possession may be served by attaching it to the rental unit door (in which case it is deemed received by the tenants three days later), given to an adult person who resides at the rental unit, or by registered mail.

The landlord is awarded recovery of the \$100.00 filing fee paid for this application. The landlord is authorized to satisfy this award by deducting \$100.00 from the tenants' security deposit.

Conclusion

The landlord's application for an order to end the tenancy and obtain an Order of Possession under section 56 of the Act is granted.

The tenancy ends two (2) days after service of the Order of Possession.

The landlord is authorized to deduct \$100.00 from the tenants' security deposit to recover the filing fee paid for this application from the tenants.

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: March 16, 2023

Residential Tenancy Branch