



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

This expedited hearing dealt with an application by the landlords pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. an early end to the tenancy and an Order of Possession, pursuant to section 56; and,
2. authorization to recover the filing fee for this application, pursuant to section 72.

KK and SK (the “landlords”) appeared at the hearing. NS appeared as a witness for the landlords.

KK testified that they served the tenant with the Notice of Expedited Hearing and evidence package by leaving a copy at the door of the rental unit on April 6, 2023. In support of this, KK provided a Proof of Service which indicates the same and includes a photograph of the document outside the door of the rental unit.

Based on the testimony and evidence of KK and in accordance with sections 88, 89(2) and 90 of the Act, I find that the required documents were served on the tenant on April 6, 2023, and are deemed to have been received by the tenant on April 9, 2023, the third day after they were posted to the door.

All parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

The tenant did not appear at the hearing. The hearing proceeded in the tenant’s absence pursuant to Rule of Procedure 7.3.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the landlord's request for an early end to the tenancy?

Can the landlord recover the filing fee?

Background and Evidence

I have considered the documentary evidence and the testimony provided by the landlord and NS. However, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's testimony and my findings are set out below.

KK testified that the parties entered into a written tenancy agreement starting October 1, 2022. Monthly rent is \$1,100.00 and is payable on the first day of each month. The tenant paid the landlord a security deposit of \$550.00, which the landlord continues to hold in trust.

KK testified that they have received several complaints about the tenant from other residents of the building. Specifically, complaints have been made from tenants residing in five of the seven units in the building. KK included copies of the resident complaints in their evidence and read them out loud during the hearing.

KK testified that the tenant has put the property and the safety of other residents in the building at risk. KK testified that the tenant's visitors broke into the main doors of the building using a knife and were violent and verbally abusive and threatened other residents. KK submitted that residents of the building complain that the tenant is putting their safety at risk and is a danger to them.

KK testified that they have previously issued a One Month Notice to End Tenancy for Cause (the "One-Month Notice"), but the tenant has not moved out. Included in KK's evidence is a copy of the One-Month Notice which contains an effective date of March 31, 2023.

The landlord is seeking an Order of Possession.

NS testified that he saw two individuals trying to open the main door of the building with knives. NS is aware that the two individuals are frequent visitors of the tenant based on

previous interactions with them. At the time the individuals were attempting to break into the building, NS and their wife were trying to exit. When the two individuals did get into the building, they had the knives in their hand. NS testified that a threat arose because the individuals still had the knives in their hands and were standing near to them. The two individuals told NS that they did not like NS and the other residents watching them. NS told them that they did not see anything. The two individuals swore at NS and the other residents and then left.

NS testified that the tenant was not with the two individuals when they broke into the building, but NS has seen them many times going in and out of the tenant's unit.

Analysis

According to rule 6.6 of the Rules of Procedures, the landlord has the onus to prove the reason they wish to end the tenancy on a balance of probabilities. In order to establish grounds to end a tenancy under section 56 of the Act, the landlord must establish that they have cause to end the tenancy and that it would be unreasonable or unfair to require the landlord to wait for a notice to end tenancy under section 47 of the Act to take effect.

Residential Policy Guideline 51 sets out that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Specifically, Policy Guideline 51 at page 5 states the following:

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and 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). Without sufficient evidence the arbitrator will dismiss the application

I have considered the testimony and evidence of the landlord and their witness, and I acknowledge that the incidents and behaviours described in this application raise concern. However, I find the allegations made by the landlord and witness and the complaints made by the other residents are vague and lacking details. The allegations of drug use and prostitution are suggestive and do not support a finding that a real and imminent threat to the safety of the property, landlord or other occupants of the building exists.

Similarly, while serious in nature, the incident described by the witness lacks details that could lend to its persuasiveness such as the date and time of the incident, a description

of the purported statements or threats made to the witness and other residents, and whether or not the police were called. I find I am unable to conclude that based on this singular event that these individuals pose an ongoing threat to the safety of the property, landlord or other occupants.

Ultimately, I find that the landlord has failed to provide sufficient compelling evidence to support that it would be unfair or unreasonable to the landlord or other occupants to follow the standard process of obtaining an Order of Possession based on the One-Month Notice that was previously issued to the tenant. I find I am not satisfied based on the documentary evidence or testimony of the landlord and their witness that the landlord has established that there are immediate threats to the property or safety of the landlord or other residents of the building such that I should find the landlord could not apply for an Order of Possession based on the previously issued Notice to End Tenancy for Cause. For this reason, I dismiss the landlord's application for an early end to this tenancy without leave to reapply.

As the landlord was unsuccessful in this application, the landlord is not entitled to recovery of the filing fee paid for this application.

Conclusion

I dismiss the landlord's application for an early end to the tenancy. This tenancy is to continue until such time as it is 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: April 27, 2023

Residential Tenancy Branch