



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

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.

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. All parties confirmed that they understood.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the 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 fixed-term tenancy began on December 1, 2021, and continued on a month-to-month basis after November 30, 2022. Monthly rent is currently set at \$1,550.00, payable on the first of the month. The landlord holds a security deposit of \$750.00.

The landlord confirmed that the tenant has not been served with any 1 Month Notices to End Tenancy for Cause, but that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use in September 2022. The tenant remains in the rental unit.

The landlord testified that the tenant and their guests have engaged in activity which the landlord believes to be in contravention of the tenancy agreement. The landlord testified that the tenant or someone in the tenant's suite has smoked on the property, despite the fact that this is not allowed. The landlord submitted text messages from the upper tenant who reported odours coming from the tenant's suite. The landlord testified that the upstairs tenant was being negatively affected by the smoke, and the tenant or their guests have not stopped despite warnings to do so.

The landlord has received complaints from neighbours about an explosion that took place on the property. The neighbours attended the hearing as witnesses, and described hearing an explosion that took place on September 29, 2022. The witnesses also provided written statements for this hearing. JM testified that around 10:45 p.m. they heard a loud bang outside. JM confirmed that they did not call the fire department, but they called the police the next day. JM observed from their own patio a cooking burner with a black substance cooking on top, and called the police.

JM states that on October 1, 2022 they observed "a homemade contraption with a glass tube" and "chemicals nearby with a white substance in a Tupperware container with a spoon on top". JM reported this and sent the police a photo. JM was advised by the police that they are unable to attend the property without a warrant, and that there was nothing that could be done. JM testified that they were sitting outside around 10:30 pm. that evening having a smoke, and heard the smoke detector go off, and observed a young male open the kitchen window. JM describes a billowing cloud of smoke when the door was opened, and called the police again. JM describes more mixing of a substance on October 22, 2022 by an older male. The male stated that they were

“making gold” when questioned by the police. JM states that they are concerned for their safety, especially since their bedroom is approximately 15 to 20 feet away from the tenant’s suite. JM also testified to observing a person smoking on the property.

NS also testified in the hearing as a witness to the explosion, and provided a statement. NS testified that they heard “a large bang noise” on September 29, 2022 around 10:45 p.m, but did not get out of bed to look. NS testified that they felt the behaviour of the tenant and their guest to be suspicious, and was cooking something outdoors that was not food. NS testified that they believed that the items were drug paraphernalia, and that they often noticed the motion sensor on at 1:30 a.m. to 3:00 a.m. NS testified that although they had submitted a police report and photos, they did not want to get involved as they feared for their personal health and safety.

The landlord also submitted copies of text message communication from the upstairs tenant who has two young kids. The landlord testified that smoke and odours from the lower suite have aggravated their respiratory systems, and have caused a significant disturbance to the occupants of the upstairs suite. The landlord also believes that the tenant had broken into the shed. The landlord testified a video of the incident was taken, but did not submit this for the application. The landlord points out that that the upstairs tenant did send a message about this to the landlord, as shown in the evidence.

For all these reasons, the landlord believes that the tenant and the parties that they have allowed on the property have threatened the health and safety of other tenants, the landlord’s property, as well as the safety of the neighbours who reside nearby. The landlord also express concern about losing their upstairs tenant, which would affect their ability to pay the mortgage. The landlord requested an immediate termination of the tenancy for this reason.

The tenant disputes all the allegations made in this application. The tenant testified that they reside in the rental unit with their seventeen year old son, and that the other person is just a guest. The tenant testified that they do not smoke, and that the landlord had altered the tenancy agreement without their permission to add a no pet and no smoking clause.

The tenant also denies that any illegal activity has taken place on the property. The tenant testified that they have been extracting gold from recycled computer parts, as shown by the pictures submitted in evidence. The tenant testified that the police have attended, and have not found the tenant or their guest to be engaging in illegal activity.

The tenant testified that the landlord was the party harassing the tenant, and that they work shift work at the hospital, which sometimes involves late nights. The tenant testified that what the neighbours observed was their son opening the windows after cooking and burning bacon inside the rental suite.

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, in their application, is attempting to obtain an early end to tenancy as they feel that the tenant and their guest have conducted themselves in a manner that has

caused significant concern for the landlord, the upstairs tenant, and neighbours who reside nearby.

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. Despite the concerns and allegations raised in this application, the landlord has not serve the tenant with a 1 Month Notice to End Tenancy For Cause. I find that the landlord 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 under section 47 of the *Act* to be unreasonable or unfair. 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.

I will first address the allegations of smoking. Although the upstairs tenant has reported odours in the home, I find that the allegations of smoking on the property by the tenant and their guests to be unproven. I note that the neighbour's statement was that they had observed smoking on the property, but no photos were submitted to show who the smoking party was. The tenant has denied these allegations. In light of the disputed testimony, I find that the landlord has not met the onus of proof to support that the tenant or their guests have smoked on the property. As pointed out by the tenant, the neighbour is also a smoker. As noted by the neighbour themselves, their home is located in close proximity to the tenant's suite. As smoke and odours can travel, and as the source of the smoke was not sufficiently proven, I do not find that this allegation is sufficient for ending this tenancy pursuant to section 56 of the *Act*.

The landlord and the neighbours also expressed concern about an explosion that took place on the property, and what they believed to be illegal activity taking place on the property. All parties confirmed that these incidents have been reported to the police, who have not pursued any charges against the tenant or their guests at this time.

In light of the evidence before me, I find that the landlord has failed to establish that the tenant or their guest have engaged in illegal activity. I find that the tenant had provided an explanation for the equipment observed on the back patio, which is not associated with an illegal act. I do note that although the neighbours did describe the same explosion, the landlord has not provided evidence to support that an explosion actually

took place, had threatened anyone's well being or safety, or had caused damage to anyone's property. The landlord has not provided confirmation of any criminal charges, nor proof that the materials on the deck are associated with drug paraphernalia. I find that the conclusions provided by the witnesses are speculative in nature as they are not experts in the area of drugs and drug paraphernalia.

I am not convinced that the evidence submitted supports 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 find that the allegations against the tenant have not been proven nor supported in evidence, and furthermore I am not satisfied that the landlord has provided sufficient evidence to support that the tenant or their guests are an immediate or ongoing threat to them or any other party. I find that this application arises out of several allegations, which are disputed by the tenant, and are not well supported in evidence. As noted above, the tenant has not been served with a 1 Month Notice to End Tenancy. I am not convinced that the tenant or their guests are an immediate or ongoing threat if this tenancy was to continue. For these reasons, I dismiss the landlord's application for an early end to this tenancy without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was unsuccessful, the landlord must bear the cost of this filing fee.

Conclusion

I am not satisfied that the landlord has met the grounds required for an Order of Possession under section 56 of the *Act*. The landlord's entire application is dismissed without leave to reapply.

I order that this tenancy 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: April 11, 2023

Residential Tenancy Branch