



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 this tenancy and an Order of Possession pursuant to section 56.

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 ('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?

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 in March 2016. Monthly rent is currently set at \$1,000.00, payable on the first of the month.

The landlord filed this application due to concerns about the accumulation of items stored in the tenant's suite. The landlord testified that they had been notified in October 2022 by the tenant in the neighbouring suite about the issue. The landlord investigated the matter, and was disturbed by the amount of items stored inside the tenant's rental unit. The landlord submitted photos of the suite, as well as correspondence with the fire department.

The fire department responded, and has been working with the landlord and tenant following an initial attempt to inspect the rental unit. The February 3, 2023 email notes that the fire department was unable to gain full access into the suite to conduct the initial inspection, but did note several fire safety concerns that require immediate attention including.

The items of concern included the following "in priority order:

Ensure a smoke alarm is installed and tested to confirm working condition,

Clear all items from entrance ways, Ensure entrance doors are fully openable,

Clear pathways to all windows and doors (34 inches minimum) Clear pathway through all living areas (34 inches minimum)

Clear items away from all heat sources (stoves, hot plates, deep fryers, heaters, furnace, electrical panels, etc.).

The fire department sent a follow up email on February 10, 2023 confirming with the landlord and tenant that a storage locker has been rented, and that the tenant is in the process of clearing items in the suite to address the previously noted concerns. An email dated February 15, 2023 was sent to confirm arrangements to conduct another inspection on February 21, 2023. On February 22, 2023, following the re-inspection, the following items of concern were noted, along with suggestions for agencies and resources to help the tenant.

Clear items away from all heat sources (stoves, hot plates, deep fryers, heaters, kettles, furnace, electrical panels, etc.).

Clear all items from entrance ways,

Ensure entrance doors are fully

openable,

Clear pathways to all windows and doors (34 inches minimum),

and Clear pathway through all living areas (34 inches minimum).

Again, some agencies and resources that could provide help with the listed items noted below and we recommend the rental owners/managers work with the tenant in order to address the above items, and to reach an acceptable solution.

The landlord notes that despite their efforts to work with the tenant, the tenant has failed to address the items of concern as requested by the fire department. The landlord is concerned about the risk to the property, as well as for the safety of those who occupy the home, which includes the landlord and their family who reside in the upper floor of the home.

The landlord testified that they had observed that the tenant has failed to keep the cooking area clear, which causes the landlord significant concern about the risk for fire.

The tenant attended the hearing along with JN, who resides in the suite next door. The tenant does not dispute the condition of the suite, but denies that they have put the landlord's property or others at significant risk to the extent that this tenancy must end.

JN testified that they did report the issue to the landlord, but feels that the tenant requires the assistance and support of others to address the problem. JN believes that the tenant is making progress, and that the landlord is simply intent on evicting both JN and the tenant as supported by previous disputes involving the parties.

Both parties confirmed that the tenant has been served with a 1 Month Notice to End Tenancy, which was disputed by the tenant. A hearing is set for June 13, 2023 to deal with the 1 Month Notice.

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

The landlord, in their application, is attempting to obtain an early end to tenancy as they feel that the tenant has put the property at significant risk ,and has jeopardized the safety of the occupants who reside in the home.

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 well 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.

In this case, although the landlord did provide undisputed evidence to support that inspections have taken place to confirm that the tenant must address concerns that were brought up by the fire department to address fire and safety concerns, I am not satisfied that the landlord has established that the risk to the property and other occupants is so great that the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

I am not satisfied that the landlord has established that any recent incidents have taken place that raise immediate concerns for immediate risk to the property or safety of its occupants, such as a fire or damage to the property. I find that the fire department has been working with the parties to provide the tenant with an opportunity to address the concerns. I find that this process is still ongoing, and due to the age and limitations of the tenant, the issue cannot be addressed quickly. I do not find that the fire department has confirmed that the tenant's actions are so significant that this tenancy must end immediately, or that the rental unit can no longer be occupied.

Although the landlord has highlighted issues that are of concern, I do not find that the landlord has met the criteria for obtaining an Order of Possession pursuant to section 56 of the *Act*. For these reasons, I dismiss the landlord's application for an early end to this tenancy without leave to reapply.

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 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: May 30, 2023

Residential Tenancy Branch