



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy. The tenant did not attend this hearing, although I waited until 9:54 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she handed the tenant a copy of her dispute resolution hearing package at 9:45 p.m. on August 5, 2012. This sworn testimony was affirmed by the landlord's witness who gave sworn testimony to attest to the landlord's hand delivery of her hearing package to the tenant at that time and date. I am satisfied that the landlord served her hearing package to the tenant in accordance with the *Act*.

Under consideration at this hearing was the landlord's application for an early end to tenancy and an Order of Possession. The landlord has also applied for an end to this tenancy for the alleged breach of the tenancy agreement which is to be considered at a dispute resolution hearing scheduled for August 29, 2012 (RTB File # 535477). For this hearing, the only written evidence that the landlord provided to the RTB on time was the limited information she included in the Details of the Dispute on her application for dispute resolution. She said that she had sent written evidence to the RTB on Friday, August 17, 2012, the business day prior to this hearing. As I had neither a copy of that late evidence nor was I convinced that this late evidence should be considered in the absence of the tenant's participation in this hearing, I have not considered the landlord's late written evidence.

During the hearing, the landlord stated that she had a host of challenges that affected her ability to present her position, and for those reasons had enlisted the support of an advocate who had agreed to assist her if necessary during the hearing. The landlord stated that she uses an electric wheelchair for mobility as a result of a broken back and other serious medical problems. She also testified that she has had multiple brain injuries and is on disability status as a result of the challenges she faces. At the conclusion of this hearing, the landlord's advocate said that she had little to add to the information presented by the landlord. She said that the landlord had been able to present her case adequately, an observation I share.

Issues(s) to be Decided

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

Background and Evidence

The landlord testified that this short-term fixed term tenancy began on July 20, 2012. She said that the terms of the residential tenancy agreement established between her and the tenant were such that the tenancy was to end on July 31, 2012, unless the landlord decided that the tenant could remain in the rental premises. She testified that the regular monthly rent was set at \$1,100.00, payable in advance on the first of each month. She testified that she continues to hold the tenant's \$900.00 security deposit and \$350.00 pet damage deposit. She said that the tenant paid \$1,025.00 towards these deposits on July 20, 2012, and the remaining \$350.00 of these deposits on July 22, 2012. She also said that the tenant has paid only \$400.00 towards his rent for this tenancy thus far.

The landlord provided a number of reasons for seeking an early end to this tenancy. As outlined in her application for dispute resolution, she maintained that the tenant breached the terms of his tenancy agreement by changing the locks on his rental unit without her permission and without leaving her a duplicate key. She also sought an early end to this tenancy for additional reasons which included the following actions allegedly taken by the tenant:

- tenant has boarded up access to her laundry room, denying her access to her laundry and to an emergency exit, a concern for her as she uses an electric wheelchair for mobility;
- tenant has allowed his dangerous dogs to access her property and threaten her safety and the safety of others on her property and nearby residents;
- tenant has allowed additional animals to reside on the premises, including a second dog, and a number of cats;
- tenant has refused to end his tenancy on the date identified as the termination date for his tenancy on their fixed term tenancy agreement; and the
- tenant has caused the landlord undue stress as she feels threatened in her living premises immediately below the tenant.

The landlord asked that her written evidence from her doctors be considered as part of my assessment of her application for an early end to this tenancy.

Analysis

Section 56(2) of the *Act* allows a landlord to end a tenancy early and obtain an Order of Possession if:

the tenant or a person permitted on the residential property by 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]...

Based on the undisputed evidence presented by the landlord, I am not satisfied that the landlord has met the second part of the test identified above as set out in section 56(2)(b) of the *Act*. This test required the landlord to demonstrate that it would be unreasonable or unfair to the landlord to wait until August 29, 2012 for a consideration of the landlord's application for an end to this tenancy for cause. I realize the landlord feels threatened and insecure in her premises. However, I find that her evidence did not convince me that the relatively short delay between this hearing and the August 29, 2012 hearing of her other application to end this tenancy for cause would be unfair or unreasonable under the circumstances. For this hearing, the landlord did not submit copies of the unusually short fixed term tenancy agreement, the terms of that agreement, or her notice to end tenancy for cause. I dismiss the landlord's application for an early end to this tenancy.

Conclusion

I dismiss the landlord's application for dispute resolution.

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: August 20, 2012

Residential Tenancy Branch