Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHORELINE RESORT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   ET, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

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

The tenant did not attend the hearing, which lasted approximately 45 minutes. The landlord's agent, PT ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses. The landlord confirmed that he is the manager of the rental building and that he had authority to speak on behalf of the landlord company named in this Application, at this hearing. The landlord called two witnesses, "witness JT" and "witness DW," to testify at this hearing.

The landlord testified that the tenant was served personally with the landlord's application for dispute resolution hearing package ("Application") on June 7, 2015. Witness JT, who is the wife of the landlord, confirmed that she witnessed this service. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's Application on June 7, 2015.

Issues to be Decided

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

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 20, 2015. Monthly rent in the amount of $750.00 is payable in advance on the 20th day of each month. A security deposit of $375.00 was paid by the tenant and the landlord continues to retain this deposit.

The landlord explained that the tenant signed a hotel registration card indicating that he would vacate the rental unit by May 1, 2015, but the tenant did not abide by this agreement. The rental unit is a room in a hotel, which the tenant is occupying under a verbal tenancy agreement. The landlord indicated that no written tenancy agreement exists for this tenancy. The landlord stated that the tenant may have vacated the rental unit on June 24, 2015, when he was seen leaving the rental premises in his car with his possessions. The landlord stated that he had not yet entered the rental unit to determine whether the tenant or any remaining possessions are still present. The landlord testified that he still requires an order of possession because the tenant might return to the rental unit.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") was served to the tenant. The landlord did not provide a copy of the 10 Day Notice for this hearing. The landlord indicated that an upcoming hearing is scheduled for July 8, 2015, the file number of which appears on the front page of this decision. The landlord stated that the above hearing is for the landlord's application for an order of possession for unpaid rent based on the 10 Day Notice. The landlord indicated that he cannot wait until the upcoming hearing date, which is six days from today's hearing, because this is an emergency situation that requires an early end to tenancy and he needs to enter the tenant's rental unit.

The landlord indicated that the tenant's behaviour has caused staff and other tenants and guests at the rental premises to be fearful. The landlord stated that other tenants and guests avoid the tenant and have been reluctant to stay at this property because of the tenant. The landlord stated that the tenant has done the following:
- the tenant's dog, which is a pitbull, has attacked two people, and has scared housekeeping staff;
- the tenant's dog is frequently unleashed and defecates on the landlord's rental property as well as on the beach;
- the tenant has been seen physically and verbally abusing his dog;
- the tenant has a pet snake and rat in his rental unit, which he is not allowed to have;
- the tenant is very loud and belligerent towards the landlord and the landlord's staff;

- the tenant has yelled and used abusive language, threatening the landlord and his staff members;
- the police have been called regarding fights between the tenant and his girlfriend;
- the tenant hung a hammock in a common area of the rental property and refused to remove it;
- the tenant blocked access to the landlord's driveway with his car on one occasion;
- the tenant smashed a planter in the parking lot;
- the tenant stole the landlord's vacuum cleaner;
- the tenant evaded police;
- the tenant changed the locks to his rental unit;
- the tenant refused entry by the landlord to his rental unit without prior written notice;
- the tenant smoked marijuana on the property;
- the tenant squeezed orange juice on the premises attracting ants; and
- the tenant caused gas-powered-generator fumes to be blown towards the landlord's staff and into the landlord's office.

The landlord stated that the tenant posted photographs of his pet rat and snake on his social networking page. The landlord submitted these photographs for this hearing. The photographs do not show the tenant or the rental unit or the date when they were taken. The landlord indicated that since serving this Application on the tenant, the tenant has been very loud, has yelled at the landlord and has called the landlord names.

Witness DW testified that she is the strata manager for this rental property, that she has witnessed some of the above complaints and she is fearful of the tenant. Witness JT and the landlord stated that they have witnessed some of the other complaints and that they are fearful and frustrated by the tenant's actions.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord and his two witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the 30 days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) **and** that it would be unreasonable or unfair for the

landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

> *(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…*

The landlord did not specifically state which of the above section(s) he was applying for and which section(s) the tenant violated.

On a balance of probabilities and for the reasons stated below, I find that the landlord's Application fails the second part of the test under section 56(2)(b) of the *Act*. The upcoming hearing date for the 10 Day Notice is only six days away from this hearing date, on July 8, 2015. I find that the landlord did not provide sufficient evidence that it could not wait another six days for the outcome of the upcoming hearing and whether an order of possession would be issued on the basis of the 10 Day Notice.

The landlord indicated in its documentary evidence that the problems with the tenant have been occurring since May 2, 2015. However, the landlord did not file its Application until June 3, 2015. If this was a matter of such urgency, presumably the landlord would have filed its Application earlier, rather than waiting for more than a month before filing. The landlord did not provide a copy of any warning letters or a 1 Month Notice to End Tenancy for Cause issued to the tenant for any of the above reasons. The documentary evidence submitted by the landlord consists of a written timeline of events, authored by the landlord, between May 2 and June 5, 2015. I am not satisfied that the landlord's complaints, as noted above, are of such an urgent nature that the tenancy must end earlier than the next hearing date.

On a balance of probabilities, I am not satisfied that the landlord has met its onus to end this tenancy early and that it would be "unreasonable" or "unfair," as per section 56(2)(b) of the *Act*, for the landlord to wait for the 10 Day Notice to take effect.

For the reasons outlined above, I dismiss the landlord's claim for an early end to this tenancy and I deny an Order of Possession to the landlord.

As the landlord was unsuccessful in this Application, it is not entitled to recover the $50.00 filing fee from the tenant. The landlord must bear the cost of this fee.

At the end of this hearing, I advised the landlord that I would not be issuing an order of possession and that I was dismissing the landlord's application for an early end to this tenancy. I advised the landlord that he was still required to attend the upcoming hearing scheduled for July 8, 2015.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

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: July 02, 2015

_____
Residential Tenancy Branch