



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 322 APARTMENTS INC
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, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 27 minutes. The landlord's agent, JA ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he was the property manager for this rental unit and that he had authority to speak on behalf of the landlord company named in this application as an agent at this hearing.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package on September 15, 2017. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's application on September 15, 2017.

The landlord testified that the tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause, dated September 7, 2017 ("1 Month Notice") on the same date by way of posting to the rental unit door. The effective move-out date on the notice is October 31, 2017. The landlord provided a proof of service with this application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on September 10, 2017, three days after its posting.

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?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on August 10, 2009. Monthly rent in the amount of \$610.00 is payable on the first day of each month. A security deposit of \$282.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing. The tenant continues to reside in the rental unit.

The landlord indicated the following three reasons on the 1 Month Notice that was issued to the tenant:

- *Tenant has engaged in illegal activity that has, or is likely to:*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
 - *jeopardize a lawful right or interest of another occupant or the landlord.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord said that he did not know what a “material term” was and how the tenant breached a material term of the tenancy agreement.

The landlord said that the tenant committed illegal activities by pulling the fire alarm three times at the rental building and having fire trucks attend for no reason. He stated that on one of those occasions, the tenant was taken to the hospital. He maintained that the tenant was committed to the mental health unit at the hospital on one occasion. He said that the tenant was not convicted of any crimes but that two of the incidents were still ongoing investigations.

The landlord claimed that an occupant of the rental building felt threatened by the tenant and wrote an email about it, which the landlord provided for this hearing. He said that

he did not find it necessary to have any witnesses testify at the hearing because he provided some written witness statements in support of this application.

The landlord also provided police letters and a police report indicating that the police attended at the rental unit due to disturbance calls relating to the tenant. He explained that the tenant has been letting homeless people into the rental building to live and shower in vacant rental units and this is dangerous for other occupants of the building. He said that the tenant was assaulted on one occasion and taken to the hospital.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings 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 thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **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:

(iv) engaged in illegal activity that

(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;

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*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for its 1 Month Notice to take effect on October 31, 2017, just six days

after this hearing date on October 25, 2017. The landlord testified that he could wait for the 1 Month Notice to take effect on October 31, 2017. He claimed that he did not know the standard to meet for section 56 of the *Act*.

The landlord confirmed that the tenant was not convicted of any crimes. None of the police reports or letters mention any criminal charges or convictions against the tenant. The police report indicates the tenant “was not apprehendable as she did not pose a threat to her self or others” so no police action was taken and the file was closed. The two police letters indicate the tenant wanting to go to the hospital and pulling the fire alarm. The landlord’s witnesses did not testify at this hearing, despite the fact that the landlord said these people were fearful of the tenant. Their complaints are about the tenant yelling and swearing at them and pulling the fire alarm.

Accordingly, I dismiss the landlord’s application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant.

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: October 26, 2017

Residential Tenancy Branch