



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 Termination of Tenancy and Order for Possession due to the tenant posing an immediate and severe risk to the rental property pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that her father-in-law had personally served the tenant with the notice of this hearing and evidentiary materials on June 14, 2018; and that this was witnessed by the tenant and her husband. As such, I find that the tenant was served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end to this 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 and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

This periodic tenancy for a lower level suite in a two-unit residential property began on September 3, 2017. The landlord and her family resides in the other living unit of this building above the tenant's suite. Monthly rent of \$650.00 is payable by the first of each month.

The landlord testified that issues in the tenancy had developed due to the tenant's failure to pay rent, the tenant's girlfriend parking her car in an unauthorized spot, and accusations by the tenant regarding the landlord's unauthorized access to his rental unit. The landlord submitted the application for an early end to tenancy as a result of a physical altercation that occurred between the tenant and her husband on June 10, 2018. Earlier that day, the landlord stated that she felt threatened by the tenant "banging" on her door. She called her father-in-law to attend, as well as the police. However, once the landlord's father-in-law arrived, she no longer felt she required police to attend, therefore the police did not attend and no police file was created. Later that day, when the landlord's husband arrived home, he approached the tenant to discuss the matter. The landlord stated she did not witness the incident but her children reported to her that the tenant had hit the landlord's husband, who is their father. The landlord's husband reportedly chased the tenant and physically responded back. The landlord called police and police attended; however, no charges were laid and no police order of protection was provided to the landlord as both the tenant and the landlord's husband had each participated in the physical exchange. The landlord submitted a police file number into documentary evidence but she did not provide a police report or any other evidence regarding this incident.

Since that altercation, the landlord stated that the imminent risk has de-escalated as the tenant is now seldom at the rental unit. The landlord last saw the tenant at the residential property on June 15, 2018 and the landlord's husband last communicated with the tenant via text message on July 1, 2018 to inquire about the July 2018 rent payment. The landlord testified that her father, who lives with her and her family, reported that he had seen the tenant a few houses away from the rental unit several days prior to the hearing. The landlord stated that it is unclear whether or not the tenant is still residing at the rental unit, or if he is just coming by the rental unit occasionally.

The landlord's documentary evidence referenced other notices to end tenancy that have been issued by the landlord, including a One Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord confirmed that the tenant continues to be in arrears for unpaid rent and that the tenant has applied to dispute this notice at an upcoming hearing scheduled for July 26, 2018. The landlord stated that she is not very familiar with the residential tenancy rules, and was unsure of the process for the upcoming hearing. I informed the landlord that if she required assistance regarding the residential tenancy legislation, policies and rules, she could contact the Residential Tenancy Branch to speak with an Information Officer or visit the Branch's website.

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 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, 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.

As outlined above, there are clearly two separate components to section 56 of the *Act*, both of which need to be met in order for a landlord to obtain an early end to a tenancy. The second component requires that a landlord demonstrate that it would be unreasonable or unfair to wait for consideration of a standard One Month Notice to End Tenancy for Cause to be considered.

In this case, the landlord indicated that she has issued other notices to the tenant, including a One Month Notice to End Tenancy for Cause and that a hearing is scheduled for July 26, 2018, although the landlord seemed uncertain as to how to proceed further with these other notices. The landlord acknowledged her limited understanding of the residential tenancy legislation and processes. However, the Information Officers at the Residential Tenancy Branch are accessible by telephone and email, and also available for in-person consultation at the office located in Burnaby, to provide assistance to both landlords and tenants regarding the process to be followed when a tenancy agreement is in dispute and the appropriate remedies available under the *Act*.

In any event, the only matter before me at this hearing was the landlord's application for an early end to tenancy, resting primarily on an incident in which there was reportedly a physical altercation between the tenant and the landlord's husband on June 10, 2018 resulting in police being called to attend.

The landlord has not submitted a police report into evidence but did provide testimony that no party was arrested or charged, and that police were unable to issue any protection orders against the tenant since the landlord's husband had been witnessed physically responding back to the tenant. Further to this, the landlord testified that her children were unable to play outside in the yard by themselves as she is "nervous" about what the tenant might do as she believes the tenant has "some grudge" against her. The landlord clarified that the tenant has not threatened her safety or threatened to commit any acts against her or her family, however, she felt that the tenant's banging on her door on June 10, 2018 was threatening.

Section 56 of the *Act* is reserved for situations where a tenant's actions have escalated to the extent that the delay involved in issuing a One Month Notice for Cause and waiting for that Notice to take effect would be unreasonable or unfair.

In this case, although the acrimonious relationship between the landlords and the tenant has resulted in a physical altercation, no police report was provided to clarify the circumstances surrounding the incident. Further to this, the landlord has only reported

seeing the tenant at the rental unit a couple of times since the June 10, 2018 altercation and it is unclear if the tenant even continues to reside at the rental unit.

In order to end this tenancy early without the issuance of a One Month Notice for Cause, I find that the landlord would require more evidence to support the grounds for urgency in this matter as the perceived threats posed by the tenant appear to be mitigated due to the fact the tenant has rarely been seen at the rental unit for several weeks.

In summary, although there *may* be cause to end this tenancy pursuant to section 47 of the *Act*, I am not satisfied that the landlords have sufficiently met the burden of proving that it would be unreasonable or unfair to wait for a One Month Notice to End Tenancy to take effect, as is required in order to end a tenancy early pursuant to section 56 of the *Act*.

Therefore, I dismiss the landlord's application for an early end to tenancy. This tenancy continues until ended in accordance with the *Act*. As the landlord was unsuccessful in her application, she must bear the cost of the application filing fee.

Conclusion

I dismiss the landlord's application for an early end to tenancy and recovery of the application filing fee. This tenancy continues 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: July 23, 2018

Residential Tenancy Branch