



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

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*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:15 a.m. in order to enable the tenant to call into 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 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 she served the tenant with the notice of this hearing and her evidentiary materials on October 23, 2018 at 7:50 p.m. by posting to the tenant's door. The landlord called on Witness D.C. who witnessed the landlord's service of documents and confirmed the landlord's testimony. Based on the testimonies of the landlord and the witness, I find that the tenant was served in accordance with section 89(2) of the *Act*.

Issue(s) to be Decided

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

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.

The landlord testified that there is no written tenancy agreement. She explained that she is the executor of her late husband's estate, and that prior to his passing on August 11, 2018, her husband managed the rental property. The rental property consists of a duplex, with two rental units in each half, for a total of four rental units. The tenant, who is her late husband's son, resides in the basement rental unit of one of the duplex units.

The landlord testified that the tenant has been residing in the rental unit since approximately September 2013. From her review of the paperwork pertaining to the rental property, the landlord believes that the current monthly rent is \$600.00 and is to be paid on the first of the month. It is the landlord's understanding that the tenancy is a month-to-month tenancy.

The landlord testified that the rental property is contaminated with mold and as a result, she is no longer able to obtain property insurance for the rental property. The landlord testified that the tenant refuses to move out.

The landlord testified that one-half of the duplex has been unoccupied and vacant for years, possibly 10 to 15 years. The upper unit above the tenant's basement rental unit has been vacant since spring 2015 when the landlord and her late husband moved out of the unit.

On September 13, 2018 a pipe burst in the unoccupied half of the duplex. A couple of days later the hot water was found to be leaking. Although these issues may have exacerbated the development of the mold, the landlord stated that there may have been issues with the plumbing, which is original to the building and corroded, and previous water damage going back many years.

The landlord testified there is no plan to remediate the property which could cost approximately \$50,000 per unit, as there was not a budget for this work provided in the estate.

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.

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, the landlord indicated that she has not been able to obtain property insurance due to the mold contamination in the building. However, there was no evidence raised that the mold was caused by the tenant or that the tenant has refused access to the rental property for the purposes of remediation. The landlord testified that there was no budget available for remediation costs. Therefore, I cannot find that the tenant has done anything to put landlord's property at significant risk or that the tenant has done anything meeting the criteria of section 56 of the *Act*, which is the first component to making a determination that the tenancy should be ended early.

Therefore, I dismiss the landlord's application for an early end to tenancy. This tenancy continues until ended in accordance with the *Act*.

Conclusion

I dismiss the landlord's application for an early end to tenancy. 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: November 19, 2018

Residential Tenancy Branch