



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pure Living Bond Street Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution to end the tenancy early and obtain an Order of Possession, and to recover the filing fee from the Tenant.

The Landlord and the Tenant both attended the hearing and provided testimony. The Landlord stated that he sent the Notice of Hearing, and evidence by email on April 3, 2020. The Tenant confirmed that this is her email address but was unclear about what she received and when. The Landlord stated this is the same email the Tenant has used to communicate with him over the last couple of months.

I find it important to note that the Residential Tenancy Branch has recognized the challenges and immense impacts that the COVID-19 pandemic has had on landlords and tenants. As such, the Government has made some changes to assist landlords and tenants manage through COVID-19. These provisions are in effect during the course of the state of emergency and until further notice.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Email service is not an approved method of service under the Act. However, some of these provisions have been modified, due to the pandemic, and the Director has issued practice directives. For example:

Personal (in-person) service of documents is not a valid method of service during this time to reduce potential transmission of COVID-19. To assist landlords and tenants work around this restriction, the Director of the Residential Tenancy Branch has issued a Director's Order to allow service by email during the state of emergency.

Emailed documents will be deemed received as follows:

1. If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;
2. If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
3. If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

This package was sent on April 3, 2020, by email, to the Tenant's email address. The Tenant did not respond to the email. As such, I turn to point number 3 above to determine whether or not the documents were sufficiently served.

I note the Tenant confirmed this was her email address, and it was used to communicate with the Landlord recently. I find the Tenant is deemed to have received the hearing package, and evidence on April 6, 2020, the third day after it was emailed to the address the Landlord had used for correspondence with the Tenant.

Given this is an expedited hearing, service must be done as soon as possible, and in accordance with the Rules and Director's Orders. In this case, the hearing package was made available to the Landlord, by the RTB, on April 3, 2020, and the Landlord emailed the package that same day. For the purposes of this expedited hearing, I find the Landlord has sufficiently served the Tenant with the application and evidence on April 6, 2020, even though the Tenant stated she did not get the email for nearly 10 days because she doesn't check her email very often.

The Tenant did not submit any evidence, nor did she request to submit any evidence.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord stated that monthly rent is \$2,800.00, and is due on the first of the month. However, no tenancy agreement has been signed by the parties. The Landlord explained that there was one tenant, left over from the previous tenancy, who he allowed to stay for an extra month or so. This period of time overlapped with this new tenancy. The Landlord explained that this tenant was allowed to stay in the basement, but it was not self contained or separated from the main house, where the Tenant on this application is staying.

The Landlord explained that, in other words, he allowed the Tenant on this application to move in on January 20, 2020, and for approximately one month she would be sharing the house with the previous tenant, until he moved out. At that point, the Tenant on this application would rent the whole house.

The Landlord explained that things started to go sideways early on, and the Tenant has not paid rent for February, March, or April. The Landlord stated that his company owns a block of houses in the area, all of which are slated to be demolished and redeveloped soon. The Landlord acknowledged that the house is not in good shape, and he rented it to the Tenant "as is."

The Tenant stated that the roof started leaking the day after she moved in, pipes were leaking, and the whole house was in disrepair. The Tenant stated that she tried to get the roof repaired, with a tarp, but it does not appear this was successful or lasting. The Landlord doesn't feel the repairs were ever done, by any real company, and feels the Tenant was trying to get paid for work that was never done. The Tenant stated that the tarp she put on the roof must have blown off.

The Landlord explained that he issued a 10 Day Notice to End Tenancy for Unpaid Rent on February 3, 2020 because no rent was received. The Landlord stated that communication degraded quickly at that point as the parties disputed what should be paid for by the Landlord for roofing repairs, and other maintenance issues.

The Landlord stated that he posted a notice to enter, on March 16, 2020, and inspected the unit on March 20, 2020. The Landlord stated that he found that the rental unit was very dirty, and there were signs of drug use. The Landlord stated that the police officer who attended the unit with him opined that it may be a drug house, but the Landlord did not provide any statements, reports or evidence to substantiate what was said by the police officer.

The Landlord provided photos of the mess, the disrepair, and the drug paraphernalia. The Tenant stated that she does not do illegal drugs, and the pipes he found were marijuana related. The Tenant expressed that the person who the Landlord allowed to live in the basement was potentially into hard drugs, as her kids found small baggies with white powder on several occasions.

The Tenant stated that part way through February, child welfare did a site visit of her house, and removed her children from the house after they determined the house was not fit for children. The Tenant stated that this is due to the leaking roof, pipes, rotting deck, and poor overall condition. The Tenant denies that she has done any illegal activity or that the condition of the house is her fault. The Landlord acknowledged that the house has some issues, but his main concern is with the lack of rent being paid, the potential drug use, and the mess.

The Tenant stated that since the Landlord came and took photos, she has done a major cleaning of her items, but the house still remains in a poor state of repair, by no fault of her own. The Tenant stated that the house is almost un-rentable, but she is trying to make the best of it (fix it such that she can get her kids back).

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the landlord when the circumstances of a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause. Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 56 of the Act.

An application for an early end of tenancy under section 56 of the Act is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a

notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, there is sufficient cause; and, it would be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

I have carefully considered the evidence before me. I find the consistent evidence is that the house is in poor shape, overall. It appears the Landlord has taken a back seat to maintenance, as it is going to be demolished in the next year or so. The Landlord acknowledged that the house has some issues. I note there are several photos provided by the Landlord. These photos were taken at the site visit around March 20, 2020, and show garbage strewn about, and general mess. However, I do not find they sufficiently demonstrate that the mess is egregious or extreme, such that it warrants an early end to the tenancy. In making this determination, I note that much of the debris and mess is superficial, and the issues which are not superficial are largely related to the Landlord's poorly maintained house.

With respect to the allegations of drug use, I note there is no police report, or any documentary evidence showing that there has been illegal activity, or illicit drug use. I do not find the photos are sufficient to show this, as the Tenant stated the pipes depicted are nothing more than cannabis devices, and vape pens. The Landlord bears the burden of proof to show there has been illegal activity, and that it has either damaged the property, impacted his lawful right as a Landlord, or impacted other Tenants. I find the Landlord has failed to demonstrate this.

With respect to the unpaid rent, I note the Landlord has applied for an order of possession based on the 10 Day Notice he issued in February. This hearing is upcoming, and the issue of unpaid rent will be dealt with at that time. It is not relevant to my findings under this application. I do not find the Landlord's statements regarding unpaid rent are sufficient to demonstrate that the tenancy must end early and in an emergency manner, under section 56 of the Act.

Overall, I do not find the evidence before me sufficiently demonstrates that any of the issues identified by the Landlord are immediate, severe, or illegal, such that they warrant an early end to the tenancy, pursuant to section 56 of the Act. I dismiss the Landlord's application for an order of possession, as I do not find it meets the criteria for an early end to tenancy, as laid out above.

Given the Landlord was not successful in this hearing, I decline to award him the recovery of the cost of the filing fee paid to make this application.

Conclusion

The Landlord has not met the burden to prove the tenancy should end early. Therefore, the Landlord's Application is dismissed without leave to re-apply and the tenancy will continue until such time it is ended in accordance with the Act.

This decision does not impact the issue set to be heard at the hearing regarding the non-payment of rent.

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: April 16, 2020

Residential Tenancy Branch