



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

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

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

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the 3 page typed letter evidence via Canada Post Registered Mail on May 4, 2020. The landlord did not serve the tenant with the additional 4 photographs and the copy of the signed tenancy agreement. The tenant did not submit any documentary evidence. I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act with the notice of hearing package and the landlord's 3 page typed letter. As the landlord confirmed that he did not serve the tenant with the additional 4 photographs or the signed tenancy agreement as per the Rules of Procedure, I find that the landlord failed to properly serve this evidence. The landlord's additional 4 photographs and the signed tenancy agreement are excluded from consideration in this decision. Neither party raised any other service issues.

Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and an order of possession?
Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an early end to the tenancy and to obtain an order of possession. The landlord provided written details which state:

The tenant has caused major disturbance to the neighbors and tenants. She is a known criminal, and has fraud charges against her. The husband who is not on the lease not only visits but stays with the tenant. The husband has multiple charges on his file. The tenant is stealing mail and possibly using it to commit another fraud. My tenant from the main house (S), who shares a mailbox with C., has filed a police report regarding stealing mail. 10 police cars were at my place yesterday.

The landlord provided affirmed testimony that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The landlord revealed that there have been police present at the rental unit; tenant smoking in or on the rental property; the tenant's dog feces left on the lawn and the tenant's dog has been left off-leash all of the time.

The landlord called a witness, S.H. another occupant of the rental building who provided testimony that she had concerns of her privacy being effected by the tenant; the tenant's dog left off-leash all of the time; the tenant's dog feces left throughout the property and the tenant is smoking on the property when the rental is a non-smoking building. The witness also stated that she has concerns her mail is being tampered with the possibility of identity theft. The witness stated that the tenant has a criminal record. The witness stated that she does not feel safe as she is concerned about possible future problems.

The landlord stated during the hearing that he has no evidence of any illegal activity by the tenant. The landlord also stated he relies solely on the witness, S.H.'s testimony and complaint letter. The landlord was not able to provide any specific details of the tenant seriously jeopardizing the health or safety or a lawful right or interest of the landlord or the witness.

The tenant provided affirmed testimony that she disputes the landlord's claims of mail tampering. The tenant confirmed that she does have a criminal record for 1 charge for fraud for which she is currently under supervision for which requires visits by the police.

The tenant stated that she has an email letter from the landlord authorising her to smoke outside on the property. The tenant also argues that her dog has only been off-leash once in which the tenant was present and observed the witness petting her dog with no apparent issues. The tenant admitted that her dog's feces is left on the lawn, but she is trying to clean up after her dog on a daily basis.

During the hearing the landlord confirmed that these listed issues are normally considered a non-emergency, but that the landlord is unable to issue a 1 month notice due to the current state of emergency. The landlord stated that he feels that this matter is too urgent to wait until the state of emergency to ends.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
 - has caused or is likely to cause damage to the landlord's property;
 - 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
 - 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.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

In this case the landlord claims that the tenant has seriously jeopardized the health and safety or lawful right or interest of the landlord's other tenant in the rental building. The landlord confirmed that the 4 primary issues for this application are normally considered non-emergencies. The landlord has stated that his tenant is concerned and feels unsafe.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be “unreasonable or unfair” to wait for a cause notice to take effect.

In this case, I find that the landlord’s reasons although compelling are not urgent enough for an application for ending the tenancy early. I find that the issues related by the landlord to be that of a non-emergency where the landlord’s other tenant is being disturbed, but the tenant is not seriously jeopardizing the health or safety or lawful of the landlord or the landlord’s other tenant. The landlord’s sole reason for making an application under this section of the Act is due to the current state of emergency in issuing a 1 month notice and not for any other particular reason that would be unreasonable or unfair to the landlord to wait for a notice to end tenancy for cause to take effect. On this basis, I find that the landlord has failed to provide sufficient evidence of an urgency for these reasons for cause.

Conclusion

The landlord’s application is dismissed.

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: May 28, 2020

Residential Tenancy Branch