



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S & K Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

The landlord filed an Application for Dispute Resolution on October 27, 2020 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlord. The matter proceeded by way of a conference call hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on December 4, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

Both the landlord and the tenants attended the hearing. I provided both parties the opportunity to present oral testimony and make submissions during the hearing.

The landlord provided evidence of service of the ‘Notice of Expedited Hearing – Dispute Resolution Proceeding’ (the “Notice”) to the tenants. This shows it was attached to the door of the rental unit on October 30, 2020. A witness provided their signature to say they witnessed this transaction. I find the landlord served the required documents to the tenants in a manner that conforms with the provisions of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause by section 56 of the *Act*?

Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of tenancy. After taking an oath from both parties, I gave each the opportunity to speak to the issue at hand.

The landlord and tenants verified the terms of the tenancy agreement. A previous fixed tenancy agreement existed between the parties from June 30, 2018 to June 2019. At the end of this term, the parties entered another agreement, to the fixed end date of August 31, 2020. The set rent amount throughout was \$1,100.

The landlord and tenants signed a Mutual Agreement to End Tenancy on June 2, 2020. This gave the vacate time as 5pm on June 30, 2020. At that time, the "tenants refused to leave." The landlord in the hearing stated that the tenants "used abusive language and refused to leave."

The landlord provided both documentary evidence and oral testimony to show how the conduct of the tenants constitutes a reason to end the tenancy for cause. This shows the following actions of the tenants:

- they received numerous reports from other residents about the tenants' conduct;
- this involves loud noise well into the late evening; confrontation with other residents; lack of sanitation; a visit from the fire department;
- "traffic", with the strong inference that frequent short-term visitors arrive and depart from the rental unit with one single purpose that is illegal in nature;
- knife-throwing on the property – involved the police taking away these implements;
- frequent police visits because of the tenants' actions.

The landlord reiterated that they made offers to the tenants to have them leave at the agreed-upon end of tenancy date. This involved an offer to accommodate the tenants at a hotel at the landlord's own expense.

In the hearing the tenants provided that they agreed to the move out because they felt "overwhelmed and threatened" at the time they signed the mutual agreement. The current situation in the local area makes it difficult to find accommodation. They also

stated there was only one tenant over the time of the tenancy who made queries, with no verbal disagreements with other building residents. They denied the charges of noise, loud music, and pests.

Analysis

The *Act* section 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end tenancy were given under section 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.

The *Act* section 56(2) follows with two criteria. First, as per subsection (1) the landlord must provide the cause for issuing the Notice. Additionally, the evidence must show, as per subsection 2, it would be unreasonable or unfair to the landlord to wait for a set period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (a) The tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;
 - (iv) engaged in illegal activity that
 - (a) has caused or is likely to cause damage to the landlord's property;
 - (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;
 - (v) caused extraordinary damage to the residential property . . .

I have considered the evidence of the tenants' behaviour and I find it was inappropriate and runs counter to what is set out in the tenancy agreement. The landlord has established, with sufficient evidence, that the tenants' actions constitute a breach of

section 56(2)(i). The visit of the fire department constitutes an egregious lack of care by the tenants and the landlord has provided sufficient evidence to place responsibility for that visit with the tenants. Knife-throwing is out-of-place anywhere on the property and could very easily jeopardize the safety of other residents with a possibility of accident or misfire. As well, when matched with the verbal confrontations the tenants had with other residents, it can very easily be interpreted as intimidating to others.

At the same time, and with consideration to the second condition set out in above, I find it is *not* unreasonable or unfair to the landlord to wait for a set period Notice to End Tenancy. That is, I find that a notice for cause under section 47 of the *Act* more properly applies. This sets a fixed period of one month for the vacancy to end.

My reason for this is there is insufficient evidence that there is an immediate danger to the health, safety or security of the landlords or other residents. The evidence shows verbal confrontation and words spoken. The evidence does not show immediate threats uttered by the tenants, and there is no evidence that the tenants stated some form of retaliation or retribution to the landlord or other residents.

In conclusion, I find the tenant's behaviour does not rise to a level that is sufficient to end the tenancy in this manner. An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant. This method of ending the tenancy is for serious and immediate risk of danger; I do not find that to be present in this case. I find that the evidence and oral testimony presented by the landlord does not show this to be the case.

I find the landlord has not proven there is cause to apply for an order that ends the tenancy early by application of section 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a section 47 one month Notice to End Tenancy.

Conclusion

I find it would not be unreasonable, or unfair to the landlord, to wait for a Notice to end the tenancy issued under section 47 to take effect.

The landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed without leave to re-apply.

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: December 7, 2020

Residential Tenancy Branch