



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ewald Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlords' 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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant LM (the tenant) and the landlords' representatives attended the hearing. Tenant DM did not attend this hearing, although the hearing lasted 33 minutes after it was scheduled to begin at 9:30 a.m. Those in attendance were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant (Tenant DM's mother) testified that Tenant DM was subject to an order from authorities that he no longer attend at the rental unit due to threatening behaviours he had exhibited towards her. Those in attendance maintained that they understood that there were also outstanding warrants against Tenant DM that made his attendance during this hearing unlikely.

The landlords gave undisputed sworn testimony that they handed Tenant DM a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on November 5, 2020. The tenant confirmed that she received a second 10 Day Notice handed to her on November 25, 2020. The tenant also confirmed that in late December 2020, the landlord served her with a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Although hearing dates have been set for consideration of the 10 Day Notice(s), the landlords have not applied for dispute resolution to consider the 1 Month Notice.

The tenant confirmed that they were handed a copy of the landlord's dispute resolution hearing package on January 9, 2021. The landlord provided undisputed sworn

testimony supported by written and photographic evidence that they also handed Tenant DM a copy of this hearing package that same day. The tenant confirmed that the landlords have provided her with a copy of their written evidence package. Based on the undisputed evidence and testimony from the landlord's representatives, I find that the dispute resolution hearing package and written evidence package were served to the tenants in accordance with sections 88 and 89 of the *Act*.

Shortly before this teleconference was to end, Tenant LM lost their connection with this teleconference. Although I waited for them to reconnect, they did not do so. As the key elements of the settlement reached between the parties and as outlined below had already been discussed and agreed to by the parties in attendance, I proceeded to end this teleconference on that basis.

Issues(s) to be Decided

Are the landlords entitled to an early end to this joint tenancy and an Order of Possession.? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

Both tenants and the landlord signed a Residential Tenancy Agreement (the Agreement) on January 25 and 26, 2015. According to the terms of the Agreement, monthly rent was set at \$1,265.00, plus \$50.00 for parking, payable by the first of each month for this tenancy, commencing on February 1, 2015. The landlords continue to hold the \$657.50 security deposit for this tenancy.

The parties in attendance agreed that the 10 Day Notices identified \$1,511.00 as owing from rent that became due on November 1, 2020. Although the tenant has made some payments to the landlords since the 10 Day Notices were issued, they agreed that \$1,833.00 remains owing at this time. The tenant testified that they have made whatever payments they have been able to make on their own, since they "kicked" their son, Tenant DM, out from the rental unit in late November.

In addition to the threatening behaviours, primarily directed at the tenant by Tenant DM, the landlords also indicated in their application for an early end to this tenancy that Tenant DM had left a damaged vehicle and considerable hoarded materials in the parking spaces assigned to them. The hoarded materials extended to other parking spaces and areas of the parking in this rental property. In addition, they claimed that

Tenant DM has contributed to a serious hoarding problem within the rental unit. The tenant noted that the vehicle in question has been removed from the premises.

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 tenants have 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.

I note that this second test to be met in order for a landlord to obtain an early end to tenancy pursuant to section 56 of the *Act* requires that a landlord demonstrate that "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" for cause to take effect.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the

hearing, the parties in attendance engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties in attendance agreed to the following final and binding resolution of their dispute. I note that the tenant has full legal authority pursuant to the *Act* to represent the interests of both joint tenants, as a co-signatory to the original Agreement.

1. Both parties agreed that this joint tenancy will end on January 31, 2021, by which time Tenant DM will no longer be allowed any access to the rental premises as a tenant in this rental property.
2. The landlords agreed to withdraw all existing notices to end tenancy issued with respect to this joint tenancy.
3. Both parties in attendance agreed that the landlords and Tenant LM will enter into a new Residential Tenancy Agreement commencing on February 1, 2021, the effect of which will be that Tenant LM will be allowed to remain in the rental unit. The landlord committed to provide Tenant LM with a new one year fixed term Residential Tenancy Agreement, solely under Tenant LM's name as the tenant, commencing on February 1, 2021 for a fixed term of one year, at a monthly rental rate of \$1,565.00, which is to include one parking space. Although rent is to be paid by the first of each month, the parties agreed to create a Schedule or Appendix to their Residential Tenancy Agreement, allowing Tenant LM to pay outstanding rent and new rent that becomes due in pre-determined increments until rental payments become current, which is to occur by at least April 1, 2021.
4. Tenant LM committed to review the material that has been left in the parking spaces and area of this building by Tenant DM by February 1, 2012, and remove and retain anything that she considers to have value, to be determined by her own discretion.
5. The landlords committed to remove all items from the parking lot that have been left in the tenants' parking spaces or elsewhere in the parking area of this building that remain there after Tenant LM has removed everything of value as outlined in Clause 4 outlined above. The landlords committed to undertake this removal of abandoned items at the landlords' expense.
6. Tenant LM agreed to continue her ongoing efforts to remove hoarded materials from inside the rental unit and to ensure that issues of hoarding within the rental unit will be resolved during the early stages of their new tenancy with the landlords.
7. The parties agreed that as compensation for the landlords' commitment to remove abandoned items from the parking area of this building as per Clause 5 outlined above that the landlords would be allowed to recover their \$100.00 filing fee from the tenants.

8. Both parties entered into this settlement agreement as a final and binding resolution of the application and all issues currently in dispute arising out of this tenancy. They did so of their own free will and without any element of force or coercion having been applied.

Conclusion

I grant an Order of Possession to the landlord effective **by January 31, 2021**. Since the landlords have committed to enter into a new Residential Tenancy Agreement with Tenant LM as of the following day, the Order of Possession identifies only Tenant DM as being required to vacate the rental unit by January 31, 2021.

In order to implement the agreement as outlined above, I order the landlords to provide Tenant LM with a new Residential Tenancy Agreement in accordance with the terms as outlined above, which Tenant LM is to sign and return to the landlords as soon as possible. Once both of these parties sign this new Residential Tenancy Agreement, Tenant LM will be allowed to remain in the rental unit past the scheduled January 31, 2021 end to their previous joint tenancy with the landlord.

I further order Tenant LM to review and retain for safekeeping any items that they deem of value from the materials left in the parking area by Tenant DM during this joint tenancy by February 1, 2021. I further order the landlords to remove any remaining items left in the parking area of this building by Tenant DM during this tenancy at the landlords' expense.

In accordance with the terms of the agreement reached between the parties in attendance, I allow the landlord to recover the \$100.00 filing fee by allowing the landlords to retain \$100.00 from the security deposit for this tenancy. The revised value of the security deposit is reduced from \$657.50 to \$557.50.

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: January 29, 2021

Residential Tenancy Branch