



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for March 28, 2022.

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for 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, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The interim decision dated March 29, 2022 noted the requirements for service of the hearing documents for both parties. The tenant acknowledged receipt of all hearing documents, and that they were ready to proceed with this matter. The landlord also acknowledged receipt of the tenant's evidence for this hearing, and that they were ready to proceed with the scheduled hearing.

Issues(s) to be Decided

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on February 1, 2020, with monthly rent set at \$1,300.00, payable on the first of the month. The landlord had collected a security and pet damage deposit in the amounts of \$650.00 each, which they still hold.

The landlord applied for an early end to this tenancy as they believe the tenant poses a significant threat to the landlord, their family, and other tenants who live on the property.

TG testified in the hearing that they were performing an inspection of the suite on December 11, 2021 and noticed the tenant was growing plants. TG testified that the main floor tenant had informed the landlord that they smelled marijuana despite the fact that smoking was prohibited inside the suite. TG testified that they were unable to complete the inspection as the tenant denied TG access to one of the rooms, which was locked. TG testified that they felt very uncomfortable, and they felt that the tenant was abusive towards TG. TG testified that the tenant had called TG a liar, and that they were screaming at TG that this was illegal. TG testified that they felt uncomfortable performing follow-up inspections after this incident.

The landlord testified that the tenant did not have a good relationship with the tenant in the main suite. An incident took place on January 16, 2022, where the wife of the main floor tenant alleges that while carrying groceries from a shopping trip, the tenant had pushed her causing her to fall to the ground. The landlord testified that the wife has since moved out as they are fearful of the tenant. RR, the main floor tenant, testified in the hearing that they were in the living room when they had heard their wife screaming and crying.

The landlord testified that the incidents have made it very difficult for them to fulfill their duties, and that they cannot inspect the suite or maintain the home. The landlord's son noted that his parents were in their eighties, and could not even communicate with the tenant due to the past issues. The landlord testified that the tenant was disrespectful, and the tenant's behaviour has had a negative impact on the main floor tenants, the landlord and their family. The landlord served the tenant with a 1 Month Notice to End Tenancy on January 30, 2022, and a hearing is set to deal with the 1 Month Notice on May 3, 2022.

The tenant disputes the allegations made about the tenant pushing the main floor tenant's wife. The tenant testified that in the beginning they had an amicable relationship with the main floor tenant, and both parties had left each other alone. The tenant testified that things had changed in the beginning of 2020 after the tenant had complained about the RR having a party, and had requested that the landlord address the tenant's concerns about Covid-19 as there was only one shared point of entry and exit into their respective suites. The tenant testified that the relationship deteriorated after that, and the main floor tenants started complaining about issues that were not issues prior to this.

The tenant disputes pushing RR's wife, and notes that nobody was around to witness the alleged push. The tenant also notes that they have not been charged with any offences. The tenant also disputes that they were verbally abusive towards TG, and testified that they had allowed TG into the suite to perform the inspection, and answered

questions accordingly. TG testified that they were unable to provide access to the locked room as it belonged to another occupant who was not present.

Counsel for the tenant argued that the landlord has failed to establish that they have sufficient grounds to end this tenancy early, and obtain an Order of Possession under section 56 of the Act. Counsel argued that the landlord has failed to prove that the tenant has caused any harm or injury, and that there is insufficient evidence to support that the tenant had pushed the main floor tenant's wife. Counsel argued that the upstairs tenants harbour a significant amount of animosity towards the tenant, and has a clear motive in wanting the tenant to move out.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, 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.

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord provided sworn testimony, as well as written statements, stating that the tenant poses a significant threat to the landlord, their family, and the main floor tenants.

The landlord confirmed that the tenant has been served with a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, and a hearing is pending to deal with this matter. The landlord, in their application, is attempting to obtain an early end to tenancy as they feel that the tenant has engaged in repeated incidents that have caused the landlord and the main floor tenants concern and fear for their personal safety and well-being.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

In regard to the allegations of marijuana, I am not convinced that the landlord has provided sufficient evidence to support that the tenant has smoked inside the rental unit. Regardless, I do not find that smoking marijuana would justify the end of this tenancy under section 56 of the *Act*.

In regard to the other allegations made about the tenant's behaviour and actions towards the landlord and the main floor tenants, although the tenant is alleged to have pushed the main floor tenant's wife, in light of the disputed testimony, I find that the parties have failed to establish that this actually happened. The parties have not provided proof of injury or harm, nor have the parties established that the tenant has been charged with any offenses related to this incident. When cross-examined, RR replied that they had heard their wife screaming and crying, but RR was not present to witness the alleged incident. Furthermore, I find it undisputed that the relationship between the tenant and main floor tenant has deteriorated significantly, which the landlord has confirmed. I find it clear that there is an ongoing dispute between the two parties, which each party raising concerns about the other's behaviour.

The landlord also testified that the tenant was abusive towards TG. In light of the disputed testimony, I find that TG has failed to establish how the tenant had been abusive towards TG, especially to the extent that warrants the early termination of this tenancy. Although I sympathize with the landlord that the relationship between all the parties have deteriorated to the extent where the landlord no longer wants the tenant to reside on the property, I find that the landlord has failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. I find that the allegations against the tenant have not been proven nor supported in evidence, and furthermore I am not satisfied that the landlord has provided sufficient evidence to support that the tenant is an immediate or ongoing threat to them or other

occupants on the property. For these reasons, I dismiss the landlord's application for an early end to this tenancy without leave to reapply.

As the landlord was not successful with their application, the landlord's application to recover the filing fee is also dismissed without leave to reapply.

Conclusion

I am not satisfied that the landlord has met the grounds required for an Order of Possession under section 56 of the *Act*. The landlord's entire application is dismissed without leave to reapply.

I order that this tenancy continue 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: April 20, 2022

Residential Tenancy Branch