



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stonehaus Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

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; and authorization to recover the filing fee for this application, pursuant to section 72.

AJ appeared for the tenants in this hearing, while the landlord was represented by JC and CC. 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 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

As the tenant confirmed receipt of the landlord's dispute resolution hearing package for this application and evidence and that they had the opportunity to review the materials, I am satisfied that the tenant was served with this package and evidence in accordance with sections 88 and 89 of the *Act*. The tenant did not submit any written evidence for this 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 fixed-term tenancy began on February 1, 2022, with monthly rent currently set at \$2,295.00, payable on the first of the month. The landlord holds a security deposit in the amount of \$1,147.50 for this tenancy. The landlord submitted copies of the complaints as well as confirmation that they have been fined because of the noise complaints.

The landlord testified that they continue to receive complaints even after the filing of this application, and were unable to submit copies of these notices prior to the hearing date. The landlord submits that the tenants and their guests not only engage in behaviour that significantly disturbs the others in the building, but the tenants and their guests have also caused other residents to be concerned for their safety due to the type of people and guests that frequent the rental unit. The landlord also expressed concern that the tenant had changed the locks without permission, or providing the landlord with keys.

The tenant AJ attended the hearing and testified that the co-tenant is no longer living there as of mid March 2022. AJ testified that the issues were due to this co-tenant, and that there are no longer any issues since AJ changed the locks.

The landlord is seeking an early termination of this tenancy for multiple reasons. The landlord testified that the tenant is arrears in their rent, and has not paid the rent despite being served with a 10 Day Notice to End Tenancy. A future hearing is set to deal with the 10 Day Notice.

The landlord testified that they have also received multiple complaints and fines related to the endless disturbance from the tenants and their guests. The tenant denies the allegations made, and testified that the observations from other residents are incorrect. The tenant testified that there will be no further issues now that the co-tenant is no longer residing there.

The landlord responded In the hearing that they have not received any notice or confirmation that the co-tenant had moved out. The landlord testified that regardless, the issues and complaints have not stopped, and they require an Order of Possession.

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 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 submitted in evidence proof of multiple complaints and fines issued by the strata. The landlord testified that they continue to receive notices of complaints despite the tenant's testimony that the co-tenant had moved out. The landlord is also concerned that they were not informed that the other tenant had move out. Additionally the landlord is concerned that the tenant has failed to pay the rent.

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 this case, despite the numerous issues described, the landlord has not served the tenants with a 1 Month Notice to End Tenancy for Cause. I find that the landlord's failure to pursue an Order of Possession pursuant to a 1 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. Although the landlord expressed concern over complaints about the behaviour of the tenants and their guests, I find that the landlord 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.

Although the tenants were served with a 10 Day Notice to End Tenancy, I am not satisfied that being late or arrears in rent meets the criteria for an end of a tenancy pursuant to section 56 of the *Act*, as noted above. Although the landlord has provided supporting evidence to demonstrate that other residents and the strata are unhappy about the tenants and the type of guests that they allow onto the property, I find that the landlord has not provided sufficient evidence to support the immediate or significant risk to the landlord, the property, or other occupants to the extent that would allow the landlord to circumvent the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice to End Tenancy for Cause. Although the landlord had provided evidence to support that the tenants have engaged in behaviour that have caused others concern, I am not satisfied that the landlord had demonstrated that the continuance of this tenancy would put others in significant or immediate risk. For these reasons, I dismiss the landlord's application for an early end to this tenancy pursuant to section 56 of the *Act*.

As the landlord was not unsuccessful in this application, I dismiss the landlord's application to obtain the recovery of his filing fee from the tenant.

Conclusion

I dismiss the landlord's application in its entirety. This tenancy continues 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: May 02, 2022