



Dispute Resolution Services

Page: 1

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

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:20 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on April 25, 2017, he personally served a copy of the Application for Dispute Resolution and Notice of Hearing to the tenant.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to an order of possession for an early end to the tenancy?
Is the landlord entitled to recover its filing fee?

Background & Evidence

The rental unit is a one bedroom apartment in a 67 unit apartment building. The tenancy is subsidized by the MPA Society who provides supportive housing for people facing the challenge of mental illness. The tenancy began on November 17, 2014 with

a monthly rent of \$990.00 payable on the 1st day of each month. The tenant paid a security deposit of \$495.00 at the start of the tenancy.

The landlord testified the tenant has been a handful since day 1 due to his mental health issues. He has social workers assisting him and the landlord has made numerous attempts at education and awareness of the tenant. It has now come to the point where other tenants in the building can no longer tolerate his behaviour which includes throwing food at other tenants. The landlord and other tenants have to remain on eggshells. Other tenants are moving out due to the tenant's behaviour.

The landlord's witness testified that he is the next door neighbor of the tenants and that he is moving out as a result of the tenant's behaviour. He testified that the tenant throws stuff against the wall, shouts and threatens people. On one occasion, the tenant walked through the garden area in the back of the building and into his balcony area. He testified that the tenant just "looked at him" and then stated "it is not cool that you are fucking around with my phone and electronics". The witness testified that this was just the tenant being paranoid. He contacted the police on this occasion. The tenant has also shouted at him telling him to "go to hell".

The landlord has also submitted various breach letters issued to the tenant but did not provide any specifics as to the reasons of issuing each of the letters.

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 or a person permitted on the property by 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 for cause to take effect.

Without making a finding on whether or not the landlord has cause to end this tenancy on any of the above grounds, I find that the landlord has not provided sufficient evidence to meet the latter part of the above test.

In the circumstances as described by the landlord and the landlord's witness, I find it would not be unreasonable, or unfair to the landlord to wait for a 1 Month Notice for cause to take effect. An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect. There is nothing in the landlord's evidence to suggest the tenant poses an immediate serious threat to the health and safety of the landlord or other occupants or to the landlord's property.

Accordingly, I dismiss the landlord's application for an early end to the tenancy.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

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 12, 2017

Residential Tenancy Branch