



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession to end the tenancy early and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord was present for the teleconference hearing while no one attended for the Tenants. The Landlord was affirmed to be truthful in his testimony and confirmed that he served one of the Tenants with the Notice of Dispute Resolution Proceeding package and a copy of his evidence in person. He stated that he did not serve the other tenant named on this dispute. Therefore, I find that one of the Tenants, RV, was duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlord named two parties as respondents on the Application for Dispute Resolution. However, as stated in rule 3.1 of the *Rules of Procedure*, each applicant must be served with a copy of the Notice of Dispute Resolution Proceeding package and a copy of the applicant’s evidence. As the Landlord only served one of the Tenants, only that Tenant will be named on this decision as the respondent.

Issues to be Decided

Is the Landlord entitled to an Order of Possession to end the tenancy early, pursuant to Section 56 of the *Act*?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement that was submitted into evidence. The tenancy began on July 1, 2018. Monthly rent is \$2,200.00, due on the first day of each month. A security deposit of \$1,100.00 was paid at the outset of the tenancy.

The Landlord testified that he is concerned about the behaviour of the Tenants and their guests and the risk this causes to the property and other people residing on the property. The police came to the rental property to investigate a break-in, which the Landlord said was a family member who was staying with the Tenants. The family member tried to run from the police and ended up causing damage to the Landlord's property.

The Landlord also provided testimony as to another incident in which a family member was driving a stolen vehicle away from the police and the Landlord's property was damaged again. The Landlord submitted into evidence a newspaper article dated September 18, 2018. The article is regarding a person driving a stolen truck and crashing into another vehicle while trying to avoid being caught by the police. Although the article does not mention any names, the Landlord stated that the incident occurred on his property by a person residing in the rental unit.

The Landlord also stated that the police found stolen items on the rental property and the Landlord has concerns regarding property of his that has gone missing. However, the Landlord stated that he does not have proof that any of his own belongings were stolen by the Tenants or guests of the Tenants. The Landlord also stated that the Tenants have many vehicles and other equipment on the rental property.

The Landlord testified that the Tenants are smoking in the home, despite not being allowed and have also not paid rent for three months. He stated that a One Month Notice was served to the Tenants in September 2018 to end the tenancy at the end of October 2018.

Analysis

The Landlord has applied for an Order of Possession to end the tenancy early under Section 56 of the *Act*. Section 56(2) states the following:

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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, and

(b) it would be unreasonable, or unfair to the landlord 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 also note that as stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. In this matter, I find that the Landlord did not submit sufficient documentary evidence to establish the claims of his testimony. The tenancy agreement and a newspaper article were the only pieces of evidentiary material before me.

Although the Landlord spoke of damage to the property, as well as future risk of further damage, I do not find sufficient evidentiary material to support this. The newspaper

article mentions a police chase in a stolen vehicle, but as the newspaper article does not mention names, I do not have evidence that links the events described in the article to the Tenants or the rental property.

As applications under Section 56 are reserved for urgent situations that cannot wait for a notice to end tenancy to take effect, the standard to be met is high. I am not satisfied that the Landlord has met the burden of proof to establish that the tenancy had to end before a One Month Notice under Section 47 of the *Act* could take effect.

Although not submitted as documentary evidence, the Landlord testified as to a One Month Notice that was served to the Tenants. However, the Landlord's application was for an early end to the tenancy under Section 56 of the *Act* and was not for an Order of Possession based on a One Month Notice.

Therefore, I dismiss the Landlord's application for an Order of Possession to end the tenancy early under Section 56 of the *Act*. As the Landlord was not successful, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

Conclusion

The Landlord's application is dismissed, without leave to reapply.

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: November 29, 2018

Residential Tenancy Branch