



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on January 21, 2019 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and sever risk; and
- an monetary order granting the recovery of the filing fee.

The landlord's agent D.K. attended the hearing at the appointed date and time, and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 15 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that D.K. and I were the only persons who had called into this teleconference.

At the beginning of the hearing, D.K. testified that he served the Application package and documentary evidence to the Tenant via registered mail on January 25, 2019. The Landlord provided a copy of the registered mail receipt in support. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

D.K. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

D.K testified that the tenancy began on October 1, 2018. D.K. stated that rent in the amount of \$1,700.00 is due to the Landlord on the first day of each month. D.K. testified that the Tenant paid a security deposit in the amount of \$850.00 which the Landlords currently hold.

D.K. testified that the Landlords are seeking an order of possession in relation to unpaid rent from the month of October 2018 in the amount of \$1,700.00. D.K. testified that he served the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 2, 2018 (the “10 Day Notice”) with an effective date of October 12, 2018 by posting it on the Tenant’s door on October 2, 2018. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,700.00 which was due on October 1, 2018. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

Analysis

Based on the unchallenged and affirmed documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy 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*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

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...

- (a) *The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.*

In this case, the Landlords have applied for an order of possession to end the tenancy early based on immediate and sever risk. During the hearing, D.K. indicated that the reason for seeking an order of possession was in relation to unpaid rent. As a result, I find there is insufficient evidence from the Landlord to demonstrate that the Tenant has significantly interfered with or unreasonably disturbed the Landlords, and has jeopardized a lawful right or interest of the Landlords. Further, I find it would not be unreasonable or unfair to the Landlords to wait for a notice to end the tenancy under sections 46 and 55 of the *Act*.

In light of the above, I dismiss the Landlords' Application, with leave to reapply.

As the Landlords were not successful with their Application the Landlords are not entitled to recover the filing fee from the Tenant.

Conclusion

The tenancy will 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: February 20, 2019

Residential Tenancy Branch