



Dispute Resolution Services

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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 pursuant to Section 56 of the *Act*, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and an agent for the Landlord (the “Landlord”) were present for the teleconference hearing, as were both Tenants. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence which was posted on their door, although stated that only one Tenant was served with the package.

The Landlord provided photos and a proof of service form stating service by posting on the door and confirmed that they served both Tenants. I accept the evidence before me that shows both Tenants were served with a package on the door, and therefore find that the Tenants were duly served in accordance with Sections 88 and 89 of the *Act*. The Tenants confirmed that they did not submit any evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement that was included as evidence. The tenancy began on December 1, 2018. Monthly rent is \$2,200.00 and a security deposit of \$1,100.00 was paid at the start of the tenancy.

The Landlord provided testimony that there are two reasons why they have applied to end the tenancy early. They stated that the first reason is due to unpaid rent for May, June and July 2019. The Landlord submitted a copy of a 10 Day Notice into evidence.

The Landlord testified that the second reason was due to complaints from the strata council and neighbours regarding disturbance and police presence at the rental unit.

The Landlord submitted a copy of a letter from the strata council dated February 14, 2019. In the letter the strata council notes that they have received many complaints regarding disturbance of quiet enjoyment of others through “multiple instances of screaming, thumping, swearing as well as heavy police and police dog presence on multiple occasions.” The letter notes incidents on December 23, 27 and 29, 2018, as well as January 20, 2019.

The Landlord stated that they have heard from neighbours that the other residents in the building want to move out due to the ongoing disturbances from the Tenants.

The Tenants provided testimony that the strata council seems to be picking on them and blaming them for incidents that occur in the building. They stated that they did receive a copy of the letter from the strata council and noted that the police only attended once, which was due to other issues going on in the building.

Analysis

Section 56(2) of the *Act* states the following regarding when a tenancy can be ended early under this Section:

- (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 note that while Section 56(2)(a) outlines the reasons that a tenancy may be ended early, Section 56(2)(b) specifies clearly that to obtain an Order to end the tenancy early,

the landlord must also establish that it would be unreasonable for them to wait for a tenancy to end through a One Month Notice to End Tenancy for Cause (the "One Month Notice").

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. Therefore, in this matter the Landlord has the burden of proof.

The letter from the strata council was dated February 14, 2019 and notes concerns regarding incidents that occurred in December 2019 and January 2019. As the Landlord filed their Application for Dispute Resolution in June 2019, approximately four months after receipt of the strata letter, I am not satisfied that they could not have reasonably waited to end the tenancy through a One Month Notice.

While the Landlord testified as to ongoing concerns with the Tenants, I find insufficient evidence regarding any incidents that occurred more recently.

An application under Section 56 of the *Act* is reserved for urgent matters and is not meant to bypass the process for ending a tenancy through a One Month Notice under Section 47 of the *Act*. I also note that although the Landlord claimed non-payment of rent, this is not a reason to end a tenancy under Section 56 of the *Act* and has a separate process through Section 46 of the *Act*.

I also find that without further evidence, the one letter from the strata council is not enough to establish that the Tenants are significantly interfering with or unreasonably disturbing another occupant or the Landlord.

Based on the above, I do not find that the Landlord has met the burden of proof to establish that the tenancy should be ended early under Section 56 of the *Act*. As the Landlord was not successful with their application, I decline to award the recovery of the filing fee.

The Landlord's application is dismissed, without leave to reapply. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The Landlord's application is dismissed, without leave to reapply. 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: July 17, 2019

Residential Tenancy Branch