



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 08, 2019 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord sought reimbursement for the filing fee.

The Landlord appeared at the hearing with his son. Nobody appeared for the Tenant. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord and his son provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and evidence.

The Landlord’s son testified that he sent the hearing package and evidence to the Tenant at the rental unit by registered mail within two days of receiving the hearing package from the RTB. The Landlord had not submitted evidence of service of the hearing package and evidence. The Landlord’s son could not provide the tracking number for the registered mail package.

Based on the undisputed testimony of the Landlord’s son, I find the Tenant was served with the hearing package and evidence in accordance with sections 59(3), 88(c) and 89(2)(b) of the *Residential Tenancy Act* (the “Act”). Pursuant to section 90 of the *Act*, the Tenant is deemed to have received the hearing package and evidence.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence, make relevant

submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Landlord be granted an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified as follows.

There is a written tenancy agreement between him and the Tenant in relation to the rental unit. The tenancy started in July of 2017 and was for a fixed term of one year then became a month-to-month tenancy. Rent is \$2,200.00 per month due on the first day of each month. No security or pet damage deposit was paid. The agreement is signed by both parties.

The Tenant has not paid rent since paying \$700.00 in May.

The Tenant has ruined and damaged the rental unit. The city has sent him letters saying they will issue a fine because of the garbage around the rental unit. The Tenant has a “grow light” in the basement. There is a lot of garbage in the basement. The carpet in the basement has been damaged from a dog the Tenant got a few months ago. The doors upstairs are damaged. There is about \$5,000.00 worth of damage to the rental unit.

The police attended the rental unit twice. The first time the Tenant called them. The second time, the Landlord called them because the Tenant was not vacating the rental unit as promised.

The Landlord could not point to what subsection of section 56 of the *Act* he was relying on as the basis for his application. The Landlord said he had not read the section.

The Landlord submitted that it would be unfair or unreasonable to require him to address the issues through a One Month Notice pursuant to section 47 of the *Act* because of the amount of damage, the letter from the city about the damage and because the Tenant has not paid rent for five months.

I asked the Landlord to point to where in the photos it shows there has been damage to the rental unit. The Landlord replied as follows. The lights are in the photos. The windows are covered. He has no idea how humid the place is. The carpet is dirty and has been damaged by the dog. The photos show the garbage outside. The garbage is attracting mice and rats. The neighbours are complaining.

The Landlord provided the following documentary evidence:

- Photos of the rental unit;
- RCMP contact card;
- 2019 Property Tax Bill;
- Proof of Service of a 10 Day Notice; and
- A 10 Day Notice.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or

5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

Orders issued pursuant to section 56 of the *Act* are reserved for the most serious of circumstances which require the tenancy to end on an urgent basis.

Non-payment of rent is not a basis to seek an order pursuant to section 56 of the *Act*. Non-payment of rent does not meet either of the two tests set out in section 56 of the *Act*. It is not urgent. It can be dealt with through a 10 Day Notice and the proper application process with the RTB.

The police attendance described does not justify an order pursuant to section 56 of the *Act*. It is my understanding the police have attended due to an ongoing dispute between the Landlord and Tenant about when the Tenant will vacate the rental unit and not because of some disturbance or illegal activity on the part of the Tenant.

The remaining issue is the damage. The only evidence the Landlord provided in this regard are the photos. The photos are of the basement, kitchen and living room. There are no photos of outside. The photos show clutter, but not excessive clutter. The photos show a lack of cleanliness and organization, but not to such an extent that I would find the Tenant has put the Landlord's property at significant risk or caused extraordinary damage to the residential property. I cannot see where in the photos it shows actual damage to the rental unit versus clutter, uncleanliness and a lack of organization.

The Landlord did not submit letters from the city. The Landlord did not submit evidence that mice and rats are being attracted to the rental unit. The Landlord did not submit evidence from neighbors.

Based on the evidence, I am not satisfied the Tenant has put the Landlord's property at significant risk or caused extraordinary damage to the residential property. The Landlord has not met the first part of the test under section 56 of the *Act*.

Even if the Landlord had met the first part of the test under section 56 of the *Act*, the evidence does not support that this is an urgent situation or that it would be unfair or unreasonable to require the Landlord to deal with the issue through a One Month Notice issued pursuant to section 47 of the *Act*. The Landlord has not met the second part of the test under section 56 of the *Act*.

I am not satisfied the Landlord has met his onus to prove the circumstances meet the two-part test set out in section 56 of the *Act*. The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 06, 2019

Residential Tenancy Branch