



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ET FFL

Introduction

This hearing was convened in response to the application of the landlord seeking an early end of tenancy pursuant to Section 56 and recovery of the filing fee paid for this application per Section 72 of the Residential Tenancy Act (the Act).

The landlord HZ, his interpreter AG, and the tenants AS and NB attended the hearing. A witness for the landlord, FX, also called into the hearing. All parties affirmed they would provide truthful testimony.

When the landlord applied, he claimed “This is an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord.”

The landlord entered into evidence Proof of Service – Notice of Expedited Hearing (RTB-9), numerous photographs of damage to the rental property, one page of a July 12, 2019 10 Day Notice to End Tenancy for Unpaid Rent of Utilities, an August 2, 2019 hand-written mutual agreement to end tenancy, and an October 1, 2019 typed letter to the tenants giving them 48 hours to vacate and warning them the locks will be changed and security cameras implemented.

The tenants disputed receiving the notice of expedited hearing package and evidence on October 10, 2019 as documented on the landlord’s RTB-9. Tenant NB acknowledged initialing the RTB-9. When I asked which documents he was acknowledging receiving when he signed, he said it was the letter giving the tenants 48 hours to vacate. NB was adamant he did not receive a notice for a hearing or photographs on October 10, 2019. NB also testified no one was with the landlord when he came to the rental unit on October 10, 2019. Tenant AS testified she was in hospital until October 30th and only learned of the hearing yesterday.

To address this discrepancy, the witness on the Proof of Service document, FX, called into the hearing to provide testimony. He testified that on October 10, 2019 he was with the landlord when he served the tenants with a 48 hour notice to vacate. The witness stated he was unable to provide testimony about the notice of hearing package and evidence unless he left the

hearing to review documents and then called back in. I declined to allow this and asked the witness to disconnect from the hearing per my authority under Rule of Procedure 7.20.

The tenants testified to receiving one envelope from the landlord for tenant NB a few days prior to the hearing; it was left on a picnic table on the rental property. The envelope contained the hearing package and photographic evidence.

The tenant AS testified she was ready to refute the photographic evidence and landlord's claim that there was major damage to the property. Given the tenant AS's familiarity with the material prepared by the Landlord, I proceeded with hearing the merits of this dispute and considered the Landlord's evidence.

Issues to be Decided

- Is the landlord entitled to end this tenancy early without giving notice as required by Section 47 of the Act?
- Is the landlord entitled to recover the filing fee paid to make this application?

Background and Evidence

There was no tenancy agreement entered into evidence. The tenant AS said she moved into the rental unit as a roommate of pre-existing tenants and then took over the tenancy in March 2019; rent is \$2,300.00 per month. The landlord agreed with the tenant's information. The tenant AS testified that with the exception of the windows, all of the damage in the photographs existed at the time the tenancy began and she asked the landlord to make repairs, which he did not do.

The Landlord testified he returned to the country in July 2019 and wanted to move into the rental property. He testified he gave the tenants notice he wanted to move into the property. No notice of an end to the tenancy for landlord's use per Section 49 of the Act was entered into evidence.

The landlord requested an inspection of the rental unit on July 22, 2019 and an inspection occurred on July 24, 2019 at which time the photographs entered into evidence were taken. Tenant NB agreed the inspection occurred on July 24, 2019 and photos were taken.

I advised the Landlord because the damage has existed since at least July 24, 2019, I do not find there is an urgent need to end this tenancy early without providing the tenants notice per section 47 of the Act. The Landlord responded by claiming the emergency is that he has nowhere else to live and must rent accommodation at his own expense.

Analysis

Section 56 of the Act enables a landlord to apply for an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47. The landlord must demonstrate it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

In the landlord's application, the reason for the urgency is the tenants posing an immediate and severe risk to the rental property, other occupants or the landlord.

As already noted above, the damage to the rental unit has existed since at least July 24, 2019. I do not find the tenants are posing an immediate and severe risk to the rental unit. The landlord's personal expense of renting living accommodation for himself is also insufficient reason to end a tenancy earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the Act. The Landlord's intention to move in to the rental unit is also not a reason for an early end to tenancy under Section 56 of the Act.

Conclusion

The landlord's application for an early end to tenancy is dismissed. The landlord's application for the tenants to pay the cost of his \$100.00 filing fee 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: November 1, 2019

Residential Tenancy Branch