



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the Landlords' Application filed under the *Residential Tenancy Act*, (the "*Act*"), for an early end of tenancy pursuant to section 56 of the *Act* and to recover the cost of filing the application from the Tenant. The matter was set for a conference call.

The Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

Issues to be Decided

- Are the Landlords entitled to an early end of tenancy and an Order of Possession, under section 56 of the *Act*?
- Are the Landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Preliminary Matter – Landlords Cautioned

During this hearing, it was determined by this Arbitrator that the Landlords were making verbal threats to the Tenant regarding action they would be taking.

The Landlords were cautioned regarding their statements and strongly urged to seek legal advice during these proceedings, regarding the Residential Tenancy Act, the Regulations, and the Emergency Ordre's issued in response to the Provincial Government's declared a state of emergency.

The Landlords were also cautioned regarding the existence of the Residential Tenancy Branches Compliance and Enforcement office and their required compliance with tenancy laws and with orders of the Residential Tenancy Branch.

Background and Evidence

The tenancy agreement recorded that the tenancy began on June 1, 2019, for an initial fixed-term of six months and rolled into a month-to-month at the end of the initial fixed-term. Rent in the amount of \$840.00 is to be paid by the first day of each month, and the Landlords are holding a \$420.00 security deposit for this tenancy. The Landlords submitted a copy of the tenancy agreement into documentary evidence.

The Landlords testified that they had issued a 2-Month Notice to End Tenancy for Landlord's Use of the Property, to the Tenant on January 31, 2020, by email, as they want to move their mother into the rental unit. The Landlords testified that they feel the health needs of their mother combined with the risks associated with the COVID-19 pandemic placed their mother's health in serious jeopardy and that their mother requires the immediate sole occupancy of the rental unit.

When asked, "What has the Tenant done wrong pursuant to section 56, to warrant the early end of this tenancy" the Landlords responded that they have the right to end the tenancy for their families use of the property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an Early End to Tenancy and an Order of Possession 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* for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, a landlord has the burden of proving that:

- There is sufficient cause to end the tenancy such as; unreasonably disturbed another occupant, seriously jeopardized the health, or safety, or a lawful right, or interest of the landlord, engaged in illegal activity, or put the landlord's property at significant risk; and
- That it would be unreasonable or unfair to the landlord or other occupants to wait for a one month notice to end tenancy for cause under section 47 of the *Act* to take effect.

In this case, the Landlords have been unable to enforce a 2-Month Notice to End Tenancy for Landlord's Use of the Property due to the current State of Emergency that was declared in response to the COVID-19 pandemic. Section 56 of the *Act* states the following:

Application for order ending tenancy early

56 (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 have reviewed the Landlords' entire testimony and documentary evidence submissions to these proceedings, and I find that there is no evidence before me, or even a claim by the Landlords, that the Tenant has done anything wrong during this tenancy.

Section 56 of the *Act* provides an opportunity for a landlord to end a tenancy without the need for issuing a Notice, in circumstances when a tenant has done something so wrong that the need to wait for a Notice to take effect would be unreasonable. In this case, I find that the Landlords are attempting to use section 56 of the *Act* to end this tenancy when the Tenant has done nothing to warrant the use of this section.

I find that due to restrictions on enforcing a Notice to End Tenancy during the State of Emergency these Landlords have applied for an early end of tenancy pursuant to section 56 of the *Act*, in an attempt to enforce their original 2-Month Notice to End Tenancy for Landlord's Use of the Property. I acknowledge the stressful situation that the Emergency Orders enacted in response to the current situation have placed both landlords and tenants, and that in frustration these Landlord have applied for the only resolution currently left available. However, I find that the mere fact that the Landlords wishes to use this property for their family, even during these unprecedented times, to be insufficient justification for ending this Tenant's tenancy pursuant to section 56 of the *Act*.

Therefore, I find that the Landlords' application to end this tenancy falls short of the standard required to obtain an early end of tenancy pursuant to section 56 of the *Act*. Consequently, I dismiss the Landlords' application for an early end of tenancy under section 56 of the *Act*, in its entirety, and without leave to reapply.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have not been successful in their application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for this hearing.

Conclusion

I dismiss the Landlords' application for an early end of tenancy and to recover their application fee. 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: May 19, 2020

Residential Tenancy Branch