



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 Landlord's 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 Tenants. The matter was set for a conference call.

The Landlord and the Landlord's son (the "Landlord") attended the hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Tenant with their documentary evidence by email, as permitted by Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the "Emergency Order").

However, the Landlord failed to submit documentary evidence to support their claim that they serviced for the Notice of Dispute Resolution Hearing documentation by email. The Landlord was ordered in these proceedings to submit a copy of the email they sent to the Tenant into documentary evidence. The Landlord confirmed that they would submit a copy of the requested email through the Residential Tenancy Online Dispute Access Site before 4:00 p.m. on the date of this hearing.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Preliminary Matter – Amending Issues

The Landlord testified that the Tenant had moved out of the rental unit and that they no longer required an order of possession.

The Landlord requested that their case still be considered as they are seeking the recovery of their filing fee for their application.

I will proceed in this hearing on the remaining issue in the Landlord's application, of the recovery of the filing fee paid for this application.

Issue to be Decided

- Is the Landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord testified that the Tenant had been verbally abusive to the Landlord, calling the Landlord abusive names and that the verbal abuse from the Tenant had been going on for the entire tenancy.

The Landlord testified that on May 6, 2020, the situation escalated when the Tenant smeared an unknown type of animal feces on the Landlord's car door handles, windows, mailbox, and barbecue. The Landlord testified that due to COVID-19 the action of smearing animal feces on the Landlord's personal property to be severe enough to warrant the end of this tenancy without the need for Notice. The Landlord submitted a video and 20 pictures into documentary evidence.

The Landlord expressed frustration and anger with this Arbitrator and the government during the hearing regarding the government's moratorium on evictions during the current state of emergency, stating that the government should be doing more to show they support Landlord's. The Landlord stated that this Arbitrator should return their filing fee to them to show that the government is not just there to help Tenants.

The Landlord began speaking over top of this Arbitrator, raised their voice and demanded that the Arbitrator return their filing fee. The Arbitrator attempted to mute the Landlord's phoneline in an attempt to gain control over these proceedings, the Landlord responded by hanging up and disconnecting from this conference call hearing at 9:45 a.m.

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, while the Tenants conduct may have been unsanitary and disturbing to others, I find the circumstance of this case are not so significant or severe that it would have been unreasonable for the Landlord to have to wait for a One Month Notice to take effect if there was sufficient cause to end the tenancy. Therefore, I find that the Landlord has fallen short of the standard required to obtain an early end of tenancy under section 56 of the *Act*.

I acknowledge the frustration expressed by the Landlord during this hearing, that due the current state of emergency they are not allowed to issue a One Month Notice to End Tenancy, and that an application pursuant to section 56 of the *Act* was the only option available to them to end this situation while under the state of emergency restriction.

However, the current state of emergency does not reduce or remove the evidentiary standard that an application pursuant to section 56 must achieve to be successful.

As the Landlord would have been unsuccessful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this hearing.

Additionally, as of 4:05 p.m. on the date of this hearing, the Landlord had not submitted a copy of the email they sent to the Tenant, to prove service of the Notice of Dispute Resolution Hearing documentation. Consequently, I also find that the Landlord has not submitted sufficient evidence to satisfy me that the Notice of Dispute Resolution Hearing documentation had been served to the Tenant in accordance with the *Act*.

Conclusion

I dismiss the Landlord's entire application without leave to reapply.

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: June 18, 2020

Residential Tenancy Branch