



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An early end of the tenancy and Order of Possession pursuant to section 56; and
- Authorization to recover their filing fees from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by an advocate.

As both parties were present service was confirmed. The parties confirmed receipt of all materials. The tenant said that some of the landlord's materials were not served until 2 days prior to the hearing. While the tenant objected to the inclusion of the landlord's late evidence, I find that it was received and its inclusion does not unreasonably prejudice any party or result in the breach of the principles of natural justice. Therefore, in accordance with the principles outlined in Residential Tenancy Rule of Procedure 3.17 and sections 71, 88 and 89 of the Act, I find that both parties were sufficiently served with the respective materials.

Issue(s) to be Decided

Is the landlord entitled to an early end of tenancy and Order of Possession?
Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in March, 2020. Monthly rent is \$1,250.00 payable on the first of each month. The rental unit is a basement suite in a detached home with the landlord and their family residing in the main level. A copy of the tenancy agreement was submitted into evidence. One of the terms of the tenancy prohibits smoking on the rental property.

The landlord gave lengthy testimony regarding multiple complaints about the tenant's conduct. The landlord accuses the tenant of smoking in the rental unit, making "vulgar hand motions" towards security cameras, jumping over the fence of the rental property, and threatening the landlord and their family. The landlord also submits that the tenant has failed to pay monthly rent or utilities for several months.

The landlord cites specific instances where they say the tenant made threats to the landlord, their child and spouse. The landlord submits that the tenant sexually assaulted their spouse by exposing themselves and uttered threats against the landlord's child. The parties both submitted into evidence copies of police reports for the various complaints made.

The bulk of the landlord's written and testimonial evidence concerned the tenant's smoking on and about the property. The landlord submits that smoking is prohibited under the tenancy agreement but the tenant continues to smoke constantly and causes a strong odor throughout the property. The landlord says that the tenant has approached the landlord's family members while smoking which is a threatening act, due to the family's aversion to smoke. Video recordings were also submitted by the landlord showing some interactions between the parties.

The landlord submits that the behaviour of the tenant has negatively impacted the quality of life for the landlord and their family. The landlord complained of stress they have endured though it was unclear how some of the issues raised were being attributed to the tenant. The landlord complained of homelessness nearby, mentioned a vacuum cleaner they believe was stolen and how they feel the tenant's use of expletives in speaking is vulgar and abusive. The landlord also complained about the provisions of the Act restricting a landlord's right to enter a rental unit without proper notice, stating

that they ought to be able to make incursions without notice to prevent a tenant from cleaning or hiding their activities.

The landlord mentions a recent interaction with the tenant which they characterize as the tenant making verbal threats against the landlord and their family by saying that they would call “biker gang friends”. The landlord says that the tenant has said “I hate cops” on multiple occasions. The landlord submitted into evidence a copy of a police report where the writer notes in part:

There is an extremely lengthy back and forth involving all parties in this incident. It appears as though the police are being used as mediators and this is failing. It also appears as though each party is using the police for their own gain in an effort to have the other arrested for their impending arbitration hearing which is happening in July.

The tenant disputes that they have threatened the landlord or their family and disputes that there has been any assault on the landlord or their family.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of 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 for a landlord’s notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord’s property at significant risk;

- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

it would be unreasonable, or unfair to the landlord, the tenant 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 find that the landlord has provided insufficient evidence to show that there is a basis for an early end of this tenancy. I find that smoking on the property may be a breach of a term of the tenancy agreement and something that the landlord and their family finds unpleasant but not behaviour that is characterized as a significant interference or unreasonable disturbance. The actions may be a nuisance and annoying but I find insufficient evidence that mere act of smoking on the property, near the landlord and their family can be considered significant or unreasonable.

Similarly, I find the landlord's complaints about the tenant's choice of vocabulary and hand gestures to be insufficient to give rise to a basis to end the tenancy. The tenant's conduct may be unpleasant and stressful but I find insufficient evidence that it is so hostile or aggressive that it has escalated beyond nuisance to be a palpable threat. I find little evidence in support of the landlord's characterization of the tenant's words as serious jeopardy to the health and safety of the landlord and their family. It is apparent from the conduct of the parties at the hearing and the video recordings that the hostile interactions are reciprocated by both parties and I find the utterances to be no more than heated exchanges.

I find insufficient evidence in support of the landlord's submission that the tenant has verbally threatened their child or assaulted their spouse. These incidents are disputed by the tenant and are not supported in the documentary materials.

I find the police reports supplied by the parties to be of limited probative value. As it is noted in one of the reports, both parties have called the authorities on several occasions. Anyone is able to call and make a complaint to the police and obtain a police report. The mere act of making a complaint is insufficient evidence that there is

any underlying wrongdoing. I find the opinions of the tenant towards police to be immaterial.

I do not find the tenant hopping over a fence to constitute a significant risk to the rental property. While the tenant may not be exiting at a designated space and not using the fence for its intended purpose, I find little evidence that there is risk to cause anything more than cosmetic damage to the property. I also find the suggestion that the tenant's conduct in the rental unit to pose a risk of fire to have little evidence in support.

While I accept the evidence of the parties that the tenant has failed to pay rent and utilities as required under the tenancy agreement, I find that non-payment of rent and utilities has no bearing on an application for an early end of the tenancy.

Based on the totality of the submissions I find that the landlord has not met their evidentiary onus to show that the conduct of the tenant has given rise to a basis for an early end of this tenancy. The landlord's complaints do not, individually or cumulatively, amount to a significant or unreasonable disturbance and I find insufficient evidence that it is unreasonable or unfair to the landlord or others to wait for a notice under section 47 of the Act to take effect. Consequently, I dismiss the landlord's application in its entirety.

Conclusion

The landlord's application is dismissed in its entirety 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: July 9, 2020

Residential Tenancy Branch