



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

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

Preliminary Matters

At the hearing, the parties confirmed that the tenant vacated the rental unit the day prior to this hearing. As the landlord confirmed that they now had possession of the rental unit, their application for an early end to this tenancy and an Order of Possession became a moot point, and the landlord's application for the early end to this tenancy is hereby withdrawn.

The only remaining issue properly before me is whether the landlord is entitled to recover their filing fee from the tenant.

As the tenant confirmed that they received the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) posted on the tenant's door, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that they received the landlord's dispute resolution hearing package and written evidence posted on their door on September 22, 2020, I find that the tenant was duly served with these materials in accordance with sections 88, 89 and 90 of the *Act*.

Although the tenant submitted written evidence to the Residential Tenancy Branch on the day before this hearing, they testified that they had not served this evidence to the landlord. Since they did not serve this written evidence to the landlord, I advised the parties that I could not consider the tenant's written evidence.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award. As noted at the hearing, posting an application for dispute resolution containing the Notice of Hearing and other dispute resolution materials on the tenant's door is not one of the methods of service permitted pursuant to section 89(1) of the *Act*. On this basis and as noted at the hearing, I am not satisfied that the tenant was properly served with the landlord's application for dispute resolution for a monetary award for the recovery of the landlord's filing fee.

Despite the above finding and after further consideration of this aspect of this dispute, I must also take into account paragraph 71(2)(c) of the *Act*, which reads in part as follows:

71 (2) In addition to the authority under subsection (1), the director may make any of the following orders:...

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Although the tenant was not served with the landlord's application for recovery of the \$100.00 filing fee from the tenant in accordance with section 89(1) of the *Act*, the tenant gave sworn testimony that they did in fact receive a copy of the landlord's application for dispute resolution. Under these circumstances and in accordance with paragraph 71(2)(c) of the *Act*, I find that the tenant was sufficiently served with the landlord's application for the recovery of the landlord's filing fee for the purposes of the *Act*.

At the hearing, the landlord advised that they were also seeking a further monetary award against the tenant. Since the landlord did not include such a request in their original application, nor did they submit any amendment to their application, I informed the landlord that I could not consider such a request during this hearing. Any such request from the landlord would need to be initiated by way of a new application for dispute resolution.

Issues(s) to be Decided

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant signed a one-year fixed term tenancy agreement with the previous owner of this property for a tenancy that began in March 2020. The scheduled end to that tenancy was March 31, 2021. When the landlord purchased this property from the previous owner, they signed a new fixed term tenancy agreement with the tenant for the period from August 13, 2020 until March 31, 2021. Monthly rent is set at \$1,450.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$725.00 security deposit and \$725.00 pet damage deposit paid when the tenant first moved into this rental unit.

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenant to end this tenancy by October 14, 2020 for the following reasons cited in that Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has:

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

Tenant has caused extraordinary damage to the unit/site or property/park.

As the landlord cited an incorrect effective date on their 1 Month Notice, I advised the parties at the hearing that the effective date of that Notice automatically corrects to October 31, 2020, the earliest possible date that a Notice issued on October 14, 2020 could have taken effect.

After the landlord commenced the application to end this tenancy early, the tenant decided to vacate the rental unit. They gave undisputed sworn testimony that they attempted to end this tenancy by way of a mutual agreement to end tenancy, but the landlord refused to sign such an agreement without the tenant's payment of \$100.00 to the landlord.

The landlord provided written evidence and sworn testimony that they needed to end this tenancy before the effective date cited on the 1 Month Notice because they felt

threatened, harassed and stalked by the tenant. At the hearing, they alleged that a “cease and desist” order had been issued against the tenant.

The tenant maintained that they moved because they felt harassed by the landlord over the past two weeks. They said that they had not been charged with anything by the police with respect to this tenancy.

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. 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.

Since the tenant vacated the rental unit before this hearing, there is no need to consider whether the landlord had sufficient grounds to end this tenancy early. However, without the landlord’s initiation of the application to end this tenancy early, there is every reason to believe that the tenant would have remained in the rental unit until at least October 14, 2020, the incorrect effective date identified on the landlord’s 1 Month Notice.

Under these circumstances, I find that the landlord's initiation of the process for ending this tenancy early did indeed lead to the tangible result that the landlord was seeking in ending this tenancy before October 14, 2020, the date that the landlord believed their 1 Month Notice would take effect. For this reason, I allow the landlord's application to recover their \$100.00 filing fee from the tenant in accordance with section 72 of the *Act*.

I allow the landlord to retain \$100.00 from the tenant's security deposit to implement this monetary award.

Conclusion

The landlord's application for an early end to this tenancy is withdrawn as it has become a moot point.

I allow the landlord's application to recover their \$100.00 filing fee from the tenant by ordering that the landlord retain \$100.00 from the security deposit for this tenancy. The retained value of the security deposit reduces from \$725.00 to \$625.00.

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: September 29, 2020

Residential Tenancy Branch