



Dispute Resolution Services

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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* ("Act") for:

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

"Landlord LM" and the tenant did not attend this hearing, which lasted approximately 25 minutes. Landlord JM ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he had permission to speak on behalf of landlord LM at this hearing (collectively "landlords").

The landlord stated that he served the tenant with the landlords' application for dispute resolution, notice of hearing and first evidence package on September 15, 2020 and second evidence package on September 29, 2020, both by way of posting to the tenant's rental unit door. The landlord provided a signed, witnessed proof of service for the posting on September 15, 2020. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlords' application on September 18, 2020, and the landlords' second evidence package on October 2, 2020, three days after each of their postings.

Issues to be Decided

Are the landlords entitled to end this tenancy early and to obtain an Order of Possession?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on May 1, 2020. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. No security deposit was paid by the tenant. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord testified regarding the following facts. The tenant has threatened the landlord with violence in emails provided by the landlords, from September 6, 2020. The landlord is worried for his own safety and the safety of the other occupants at the rental property. The landlord called the police to the rental unit, who offered the landlord the option to charge the tenant with a threat, which the landlord declined. The landlord wanted the police to talk to the tenant instead. The police told the landlord that there was only one threat of beating up the landlord, and the rest was name-calling, so they did not qualify as threats. The police were only looking for threats of direct, physical harm to the landlord.

The landlord stated the following facts. On September 24, 2020, the landlord emailed the tenant for a 24-hour inspection and the tenant refused the landlord's request, said that he would call the police, and told the landlord that he would see him at this RTB hearing. The landlord is scared to go to the rental unit or do any inspections. The police have told the landlord to stay away from the tenant and wait for this hearing. The landlord has not issued a 1 Month Notice to the tenant, did not know what it was when asked, and said that he gave the tenant a notice for unpaid rent. The landlord cannot wait for a 1 Month Notice to take effect because the tenant has damaged his rental unit and kicked holes in the walls, as per a Facebook video posted by the tenant on the day before this hearing, which the landlord did not provide. There has been no communication or issues with the tenant since emails between the parties on September 25, 2020.

Analysis

Section 56 of the *Act* requires the landlords to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlords or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlords must show, on a balance of probabilities, that:

- (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;*

On a balance of probabilities and for the reasons stated below, I find that the landlords' application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlords did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord did not testify about which one of the above parts of section 56(a) of the *Act*, that the landlords were applying under.

The landlords failed to show the urgency of this situation to demonstrate that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined. The landlord did not issue a 1 Month Notice to the tenant. The landlord did not even know what a 1 Month Notice was when asked during the hearing.

The landlord did not ask the police to charge the tenant with any crimes, despite being given the opportunity to do so. The landlord confirmed that the police did not arrest or charge the tenant with any crimes. The police told the landlord that name-calling did not qualify as threats by the tenant. The landlord did not produce any police reports or police officers to testify at this hearing. He claimed that I should look up the police file number, but I informed him I do not have access to the police database. The landlord has not seen the tenant or had communication with him since September 25, 2020, over one month prior to this hearing on October 29, 2020. The landlord claimed that the matter was urgent because the tenant was causing damage to the rental unit, but he did not provide documentary proof of same, despite claiming that the tenant posted a video of kicking holes in the rental unit walls.

Accordingly, I dismiss the landlords' application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlords' entire application is dismissed 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: October 29, 2020

Residential Tenancy Branch