



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on October 06, 2020 (the “Application”). The Landlords applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlords also sought reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Landlords who did not have questions in this regard. The Landlords provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlords’ evidence.

The Landlord confirmed the hearing package and evidence were sent to the rental unit by registered mail October 08, 2020. The Landlords had submitted the customer receipt for this with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered October 09, 2020.

The Landlord also testified that the package was placed in the mailbox of the rental unit October 08, 2020.

Based on the undisputed testimony of the Landlord, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(2)(b) of the *Act*. I also find the Landlords complied with rule 10.3 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the Landlords. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted in evidence. The most current tenancy agreement started March 01, 2016 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent was \$1,850.00 per month due on the first day of each month. The Tenant paid a \$925.00 security deposit. The agreement is signed by the Tenant.

The Landlord confirmed the tenancy agreement is accurate. The Landlord advised rent has been increased to \$1,925.00.

The Landlord testified as follows.

The Landlords are requesting an Order of Possession. The Tenant was served a 10 Day Notice in September. The Tenant has not paid rent since April 01, 2020. Given the pandemic, the Landlords could not serve a 10 Day Notice. The Landlords issued the Tenant a repayment plan; however, the Tenant has not made payments. The Landlords were awarded a Monetary Order for unpaid rent on a previous file.

The Landlords have attempted to contact the Tenant over the phone and in person, but the Tenant is refusing contact.

During attempts to contact the Tenant, the Landlord saw that the garage door has been kicked in and there is garbage and parts of the interior of the house in it. A police report was filed. The Landlords are concerned about the interior of the house as they still have not been granted access.

The Landlord said the Landlords are seeking an Order of Possession due to unpaid rent.

I told the Landlords unpaid rent is not a basis for an Order of Possession under section 56 of the *Act*. The Landlords were unaware of this. I explained the requirements under section 56 of the *Act*.

The Landlord further testified as follows. There is urgency due to concerns about what is happening to the interior of the house. The Landlords do not know if there will be any value left based on what the Landlord saw in the garage.

I asked the Landlord for further details about what happened with the garage. The Landlord did not have further details such as who kicked the garage door in or what happened in relation to the garage. The Landlord did say the garage has not been fixed and there is no lock on it because the frame was kicked in.

The Landlord further testified as follows. The Tenant is not answering the door and there is a dog on the premises. The Tenant is not willing to allow the Landlords into the rental unit.

I asked the Landlord what the Landlords wanted me to take from the text messages in evidence. The Landlord said the point of the text messages is to show the Tenant is not telling the truth and commits to things then does not follow through. The Landlord said the Landlords do not trust the Tenant. The Landlord said the texts relate to paying rent and allowing access to the rental unit.

The Landlord said she feels almost threatened by the Tenant and does not feel safe or comfortable going to the rental unit. I asked the Landlord why this is. The Landlord said this is due to a text where the Tenant wrote, "This is the choice you picked" when the Landlords tried to get access to the rental unit. The Landlord also advised about a time when she went to the rental unit and the Tenant came out to her car and told her to back off such that she could not get to the property.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlords, as applicants, have the onus to prove the circumstances meet this two-part test.

I am not satisfied the Landlords have shown that the circumstances meet the two-part test set out in section 56 of the *Act*.

As explained to the Landlords during the hearing, unpaid rent is not a basis for an Order of Possession under section 56 of the *Act*.

The remaining allegations are not serious enough to warrant ending this tenancy under section 56 of the *Act*, which is reserved for serious and urgent matters.

I am not satisfied based on the evidence and submissions provided that the Tenant refusing contact, refusing access, not telling the truth and not following through with

commitments is sufficiently serious or urgent to warrant ending the tenancy under section 56 of the *Act*. In the absence of further evidence, I am not satisfied it would be unreasonable or unfair to require the Landlords to deal with these issues through a One Month Notice.

In the absence of further details about what happened with the garage door, who caused the damage to the garage door and what happened in relation to the items in the garage, I am not satisfied the garage issue is sufficiently serious or urgent to warrant ending the tenancy under section 56 of the *Act*. In relation to the concerns about the interior of the rental unit, I note that the Landlords do not know that anything is wrong with the interior of the house. Nor do I have sufficient evidence before me showing anything is wrong with the interior of the house. In the absence of further evidence, I am not satisfied it would be unreasonable or unfair to require the Landlords to deal with the garage issue through a One Month Notice.

I am not satisfied that the Tenant texting, "This is the choice you picked" or the Tenant telling the Landlord to back off is sufficiently serious or urgent to warrant ending the tenancy under section 56 of the *Act*. In the absence of further evidence, I am not satisfied these two statements are threatening or would reasonably lead to someone feeling unsafe around the Tenant. Feeling uncomfortable around the Tenant because the relationship has deteriorated is not sufficiently serious or urgent to warrant ending the tenancy under section 56 of the *Act*. In the absence of further evidence, I am not satisfied it would be unreasonable or unfair to require the Landlords to deal with these issues through a One Month Notice.

In summary, I am not satisfied the Landlords have provided sufficient evidence to show that the situation with the Tenant is sufficiently serious or urgent such that the tenancy should end under section 56 of the *Act*. I find that the issues raised can and should be dealt with through a 10 Day Notice for unpaid rent or a One Month Notice.

Given the Landlords have failed to prove the two-part test set out in section 56 of the *Act*, the request for an Order of Possession is dismissed without leave to re-apply.

Given the Landlords were not successful, I decline to award the Landlords reimbursement for the filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 30, 2020

Residential Tenancy Branch