



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *ET, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to section 56 of the *Residential Tenancy Act*, for an order to end the tenancy early and obtain an order of possession. The landlord also applied for the recovery of the filing fee.

The landlord testified that he served the tenant with the notice of hearing and application for dispute resolution on November 17, 2020, by handing it over to the tenant in person. The tenant did not participate in the conference call hearing. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*. The hearing proceeded in the tenant's absence.

Issues to be Decided

Is the landlord entitled to end the tenancy early? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy started on November 01, 2018. The monthly rent is \$387.50 payable on the first of each month.

The landlord stated that he has received multiple noise complaints against the tenants, from the neighbours. The written complaints describe the noises as incessant and "demonic". The landlord filed an audio tape of the noises.

The landlord testified that during the summer, the tenant lit a bonfire in the front yard, when there was a Province wide ban on fires. The landlord also described an incident when his manager was alleged attacked by the tenant. This incident took place in May 2020.

The landlord filed a statement regarding the incident, written by the manager. The statement does not provide any details of the attack. The police were called but no one was arrested or charged. The landlord did not file a copy of a police report.

On September 08, 2020, the landlord served the tenant with a one-month notice to end tenancy for cause. The tenant disputed this notice On October 05, 2020 which is beyond the legislated time frame of 10 days. This matter is scheduled to be heard on December 14, 2020. The landlord did not file a copy of the notice to end tenancy.

On November 10, 2020, the landlord made this application for an order of possession to put an early end to tenancy.

Analysis

Section 56 is an extraordinary remedy that is reserved for situations in which there is a clear and present danger, or a genuine threat of imminent harm of such an extreme nature that it would warrant immediate intervention and removal of the tenant.

In addition to proving that there is cause to end the tenancy, in an application of this nature the landlord must clear a second hurdle. Under section 56(2)(b) of the Act, in order to establish a claim for an early end to tenancy, the landlord must establish that “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”.

Based on the written submission and testimony of the landlord, I find that the landlord did not provide sufficient evidence to support the alleged attack on his manager. In addition, this incident took place in May 2020 and the landlord made this application in November 2020. The landlord agreed that this was a one-time incident.

Even if I accept that the tenant acted in the manner alleged by the landlord, I find that a situation such as this does not pose an immediate threat to the safety of the landlord, his staff or other residents of the complex. Therefore, I am not persuaded that it would be unreasonable or unfair for the landlord to wait while a one-month notice to end tenancy takes effect.

The landlord also cited noise disturbances and a bonfire for reasons why he wanted to put an early end to the tenancy. While it is possible that the landlord may have cause to end the tenancy upon one month's notice, the landlord has not established grounds for an extraordinary remedy such as this. For the above reasons, I dismiss the landlord's application to end tenancy early.

The landlord has not proven his case and must therefore bear the cost of filing this application.

Conclusion

The landlord's application is dismissed.

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: December 01, 2020

Residential Tenancy Branch