



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for an early termination of tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing and the tenant RH attended the hearing ("tenant"). As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Application for Dispute Resolution and the landlord acknowledged service of the tenant's evidence. Neither party raised concerns with timely service of documents.

Issue(s) to be Decided

Does the tenant pose an immediate and severe risk to the rental property, other occupants or the landlord?

Can the landlord recover the filing fee?

Background and Evidence

The landlord testified that she is in the process of selling the rental unit. She would be able to sell the property if the tenancy were month to month, however she alleges the tenant altered the original tenancy agreement to indicate the tenancy is a fixed term, ending in July of 2021. The "alteration" is jeopardizing her ability to sell the rental unit.

The landlord acknowledges there is no imminent danger to herself, another occupant of the property or the property itself. The landlord testified the threat she faces is to the sale of the property. The landlord testified that she has potential reasons to end the tenancy for cause, however those reasons were not explored during this hearing.

The tenant gave the following testimony. She is not aggressive or threatening to the landlord or anybody else. The tenancy agreement is for a fixed term, not month to month.

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. (emphasis added)

Orders for Possession issued under section 56 of the *Act* are reserved for the most dire or urgent of situations.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)

...

Applications to end a tenancy early are for **very serious breaches only** and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

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.

The landlord has testified that there is no imminent danger to her health, safety, or security from the tenant, although the potential sale of her property is in jeopardy. In light of this, I do not find the landlord has satisfied me 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. As the landlord has indicated to me she has reasons to end the tenancy for cause, I find it would be reasonable for the landlord to serve the tenant with a One Month Notice to End Tenancy for Cause pursuant to section 47. After being served with the Notice, the tenant may either dispute the notice in accordance with section 47(4) or accept the tenancy ends on the effective date of the notice.

Accordingly, the landlord's application for an early end to tenancy pursuant to section 56 of the *Act* is dismissed.

I make no finding on the landlord's allegation that the tenant made alterations to the tenancy agreement, as that issue is not within the scope of an application for an early end to tenancy made pursuant to section 56.

Conclusion

The landlord's application for an early end to tenancy pursuant to section 56 of the *Act* is dismissed.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

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 04, 2020

Residential Tenancy Branch