



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 Landlord's Application filed under the *Residential Tenancy Act* (the "Act") for an early end of tenancy pursuant to section 56 of the *Act* and to recover the cost of filing the application from the Tenants. The matter was set for a conference call.

The Landlord's Agent (the "Landlord") attended the hearing and was affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been served to the Tenants by registered mail sent on November 13, 2020. I find that the Tenants have been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to an early end of tenancy and an Order of Possession, under section 56 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord testified that they attended the rental unit on October 25, 2020, and that during this visit, they tried their key in the front door of the rental unit to ensure that the key still worked but did not enter the rental unit. The Landlord testified that they knocked several times trying to get the Tenants to answer the door, waiting about 10 feet back from the door when the Tenant's girlfriend exited the rental unit and attacked them.

The Landlord testified that they and the Tenant's girlfriend fall to the ground during this attack and the suffered a gash to their head that required stitches and the Tenant's girlfriend had several scratches. The Landlord testified that after the attack, when the Tenant's girlfriend went back inside, they went to a neighbouring unit for help. The neighbours were not home, but their front door surveillance system captured a picture of him with a bloody face. The Landlord submitted an email and picture from this neighbour into documentary evidence.

The Landlord testified that a third party, who lived in the area, found them on the street and offered to assist them, but that they were already on the phone with the police so they sent them away. The Landlord submitted an email from this third party into documentary evidence.

The Landlord testified that when the police attended, they interviewed both the Tenant's girlfriend and themselves, but that in the end, no one was charged due to this incident. The Landlord testified that the Tenant's girlfriend had told the police that the Landlord had entered the rental unit without permission or Notice and that the Tenant's girlfriend had also suffered injuries during this incident.

The Landlord testified that they did not entered the rental unit on this day but that due to the conflicting accounts of the event no one was charged. The Landlord testified that it is very dangerous for them to attend the rental unit and that due to this incident, they are seeking an order of possession under section 56 of the *Act*.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an Early End to Tenancy and 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 of the *Act* for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, a landlord has the burden of proving that:

- There is sufficient cause to end the tenancy such as; unreasonably disturbed another occupant, seriously jeopardized the health, or safety, or a lawful right, or interest of the landlord, engaged in illegal activity, or put the landlord's property at significant risk; and
- That it would be unreasonable or unfair to the landlord or other occupants to wait for a one month notice to end tenancy for cause under section 47 of the *Act* to take effect.

After careful review of the Landlord's documentary evidence, I find that the Landlord has not provided sufficient evidence, to satisfy me, that the guest of the Tenant assaulted the Landlord on October 25, 2020. I acknowledge that an assault would be grounds to end a tenancy under section 56 of the *Act*; however, other than the Landlord's personal account of these events, I find that there is no evidence before to support the Landlord's account of these events. Specifically, I note that the police who attend that day could not determine what happened or who had been at fault during this incident. Also, I have reviewed the witness statements submitted into evidence by the Landlord, and where I can acknowledge that these statements show that the Landlord was injured, they offer no account of the events that cause the injury to the Landlord.

In the absence of sufficient evidence, I find that I must dismiss the Landlord's application for an early end of tenancy under section 56 of the *Act*, as I find there is insufficient evidence to support the Landlord's claim made during these proceedings.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their

application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this hearing.

Conclusion

I dismiss the Landlord's application for an early end of tenancy and to recover their application fee. This tenancy continues until ended in accordance with the *Act*.

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 14, 2020

Residential Tenancy Branch