



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

This expedited hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

All parties attended and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. No issues of service were raised. I find each party served the other in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on March 1, 2013. Monthly rent is \$2,435.00 payable on the last day of the month. The tenants provided a security deposit of \$1,000.00 which the landlord holds.

The unit is the top floor of a residential building. The tenants and three children live in the unit. There is a downstairs suite as well; the tenants in that unit are referred to as “the downstairs occupants” and they have resided there for 6 months.

The landlord requested that the tenancy end immediately on an emergency basis because of actions of the tenants which purportedly took place on April 2, 2021. The landlord testified they received information from the downstairs occupants that the male tenant had deliberately driven his car into the back of their car because it was blocking the driveway. In support of this claim, the landlord stated they had a police file number and information regarding an insurance claim.

The landlord submitted an email from one of the downstairs occupants describing the event and stating, "We feel extremely uncomfortable living here at the moment. He [male tenant] seems very unstable and aggressive. We don't feel like we can relax or enjoy the shared space outside."

The tenants denied the event occurred. They stated they were "model" tenants who had lived in the unit for 8 years and maintained the back yard "as though it were our own". They testified that they were "mature, responsible", employed people, parents of three children at home, and would never do such a thing. They claimed the downstairs occupants made up the entire event.

During the hearing, both parties provided an account of their relationship and events which led up to this application. The tenants testified to infringement of their backyard which they testified is included in the tenancy by the downstairs occupants and submitted photos of them using the yard without permission. The tenants also stated that they complained to the landlord just two weeks prior to the alleged incident about a water leak and mold. They stated the claim was not based on fact but was motivated by other concerns such as the landlord wanting to rent the unit at a higher rate and avoid costly repairs.

The landlord denied that they were motivated by anything other than a desire to assure the well-being of the downstairs occupants.

During the 57-minute hearing, each party referred to past events, earlier correspondence, and previous statements as evidence of the other's bad faith and poor behaviour.

The tenants stated that they have no desire to move out of a place they have lived in with their children for 8 years. The landlord requested an immediate end to the tenancy and an order of possession.

Analysis

The parties submitted considerable evidence in a hearing that lasted 57 minutes.

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

The standard of proof in a dispute resolution hearing is on a balance of probabilities which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end of notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section states:

Application for order ending tenancy early

56 (1) *A landlord may make an application for dispute resolution to request an order*

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and

(b) granting the landlord an order of possession in respect of the rental unit.

Expedited hearings are for serious matters and are scheduled on short timelines and on short notice to the respondent. *Policy Guideline 51 – Expedited Hearings* provides guidance on applications of this nature. The Guideline states that the expedited hearing procedure is for 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. The Guideline states in part as follows:

Ordinarily, the soonest an application for dispute resolution can be scheduled for a hearing is 22 days after the application is made. This helps ensure a fair process by giving the respondent ample time to review the applicant's case and

to respond to it. However, 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.

...

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).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;*
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;*
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or*
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.*

To grant an order under section 56(1), I must be satisfied as follows:

56 (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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;
- (v) caused **extraordinary** damage to the residential property, **and**

(b) it would be unreasonable, or unfair to the landlord 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

(emphasis added in bold)

The landlord relied on sections (a)(i) and (ii). That is, the tenants had:

- (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;

In this case, the landlord relies upon an event, the alleged hitting by the male tenant of the downstairs occupants' car. They stated that the downstairs occupants are uncomfortable and concerned. The tenants denied that the event occurred and question the landlord's motivation in bringing the application.

I find the tenants provided credible testimony and evidence. I find the landlord has not established that the event happened in the manner to which they testified. I find the landlord's account of what took place to be primarily based on what they have heard

from others which I find may not be reliable or factual. Even if it did occur, which I do not accept, such an occurrence would be out of keeping with the tenants' behavior in an 8-year tenancy. I find the landlords have not shown that there is a reasonable risk of danger or harm to the downstairs occupants as claimed. Where the testimony of the parties' conflicts, I prefer the tenants' version.

In summary, in considering the evidence and submissions, I find the landlord has not met the burden of proof with respect to either of these sections.

I also find the landlord has failed to meet the burden of proof with respect to the second part of the test, as follows:

It would be unreasonable, or unfair to the landlord 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.

I find the landlord has failed to establish that it is unreasonable or unfair to wait for the landlords to issue a One Month Notice to End Tenancy for Cause.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for an order under section 56 of the Act. As such, I dismiss the landlord's application without leave to reapply.

Conclusion

The landlord's 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: May 10, 2021

Residential Tenancy Branch