



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served with the landlord's application for dispute resolution package and evidence on or about May 27, 2021, by way of posting the package on the tenant's door. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with the landlord's Application and evidence 3 days after posting. The tenant did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on May 1, 2021, with monthly rent set at \$1,400.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$700.00, which the landlord still holds.

The landlord filed this application as the tenant resides in the upper suite of the home. The lower suite is rented out to another tenant, who has complained to the landlord about repeated disturbance by the tenant and tenant's guests. The landlord testified that the tenant

In the landlord's application, the landlord states that the tenant was warned prior to moving in that the tenant was expected to be quiet from 10:00 p.m. to 7:00 a.m. The landlord testified that the noise has prevented the lower tenant from sleeping, and despite the landlord's attempt to address the matter, which has included the issuance of a 1 Month Notice to End Tenancy for Cause on May 15, 2021, the tenant has not stopped.

Furthermore, the landlord testified that the tenant has propped a ladder, which is situated directly outside the lower tenant's bedroom window, which is used by the tenant's guests to enter the tenant's suite. The landlord testified that he had obtained a video of this. The landlord is concerned about the safety of his other tenant, and testified that the tenant has also threatened the ruin the landlord financially.

The landlord testified in the hearing that the landlord has also served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

Analysis

The landlord, in their application, requested an Order of Possession on the grounds that the tenant's behaviour has been extremely disturbing to the other tenant in the home.

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 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 of the *Act*, 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.

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord provided sworn testimony, as well as submitted in evidence as correspondence from the other tenant, as well as photos of the ladder used by the tenant in order to allow the tenant's guests to access the suite.

The landlord confirmed that the tenant has been served with a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, as well as a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord, in this application, is attempting to obtain an early end to tenancy as the landlord feels the tenant has acted in a threatening manner when the landlord has attempted to address the ongoing issues, which have not improved.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application

falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Despite the landlord's concerns, and the fact that the tenant was served with a 10 Day Notice to End Tenancy as well as a 1 Month Notice to End Tenancy for Cause, the landlord has not filed an application for an Order of Possession pursuant to those Notices. The landlord's failure to pursue an Order of Possession pursuant to a 10 Day Notice or a 1 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. Although the landlord has provided supporting evidence to demonstrate that the tenant's behaviour has been extremely disturbing to the other tenant as well as the landlord, and although I am sympathetic to the landlord and the other tenant, and the fact that they have felt disturbed and stressed due to the tenant's behaviour, I find that the landlord failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

As the landlord was not unsuccessful in this application, I dismiss the landlord's application to obtain the recovery of his filing fee from the tenant.

Conclusion

I dismiss the landlord's application in its entirety. 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: June 18, 2021