



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 pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to 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, which lasted approximately 16 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of a hearing by any party.

During the hearing, I explained the hearing process to the landlord. The landlord had an opportunity to ask questions. The landlord did not make any adjournment or accommodation requests.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on June 10, 2021 and a notice of hearing was issued by the RTB on June 11, 2021. The landlord was required to serve that notice, the application, and all other required evidence in one package to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord stated that she served the tenant with the landlord's application for dispute resolution hearing package on June 11, 2021, by leaving a copy personally with two adults residing with the tenant, which was witnessed by another person. The landlord said that the two people identified themselves as adults living with the tenant. The

landlord provided a signed, witnessed proof of service but stated that the witness erroneously did not indicate on the form that the application was served in person. In accordance with section 89(2)(c) of the *Act*, I find that the tenant was personally served with the landlord's application on June 11, 2021, by leaving a copy with two adults apparently residing with the tenant.

Issues to be Decided

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

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

Background and Evidence

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

The landlord testified regarding the following facts. This month-to-month tenancy began on December 7, 2020. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$900.00 is payable on the first day of each month. A security deposit of \$190.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The landlord stated the following facts. The tenant owes the landlord money for rent. The tenant threatened to kill the landlord and "beat the shit" out of her. These threats were made "behind the [landlord's] back," to other people like the landlord's bookkeeper, not to the landlord in person. The tenant has noisy parties. The tenant propositioned a lady living in the building because he thought she was a prostitute. The landlord's witnesses provided letters for this hearing but could testify at a later date after the hearing is over. The police attended at the rental unit multiple times and the landlord is aware of the freedom of information procedure to request police reports but did not do so for this hearing. The landlord's complaints against the tenant date back to January 2021. There are two other people living in the rental unit with the tenant, which is not permitted. The landlord "has no proof" but in June 2021, the police came to the rental unit because the tenant "almost got into a fight with another tenant." The tenant is affecting other tenants in the rental building, not just the landlord.

Analysis

The following RTB *Rules of Procedure* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

During the hearing, I informed the landlord that as the applicant, she had the burden of proof to present her claims. I find that the landlord did not properly present her claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 16 minutes and only the landlord attended the hearing, as no other parties were present. The landlord had ample opportunity to present her application. However, the landlord did not go through any of her documentary evidence submitted for this hearing, mentioning only witness letters and caution letters but not going through these documents in any detail. The landlord was given ample time to present her case and was even questioned if she had any other information to provide.

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

(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;*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord did not testify about which one of the above parts of section 56(a) of the *Act*, that the landlord was applying under.

The landlord failed to show the urgency of this situation to demonstrate that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined. The landlord did not indicate whether she issued a 1 Month Notice to the tenant. The landlord provided caution letters to the tenant dating back to January 7, 2021, relating to unpaid rent and noisy parties. This is more than five months prior to this hearing date of June 18, 2021.

The landlord did not produce any police reports or police officers to testify at this hearing, despite stating that the police attended at the rental unit multiple times. The landlord did not produce any witnesses to testify at this hearing, despite referencing letters from these witnesses and stating that death threats were made to them about the landlord.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant. This claim is dismissed without leave to reapply.

Conclusion

The landlord's entire 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: June 18, 2021

Residential Tenancy Branch