



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with the landlord's application pursuant to the *Act* for:

- An early termination of a tenancy pursuant to section 56 because the tenant or a person permitted on the property by the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord; and because it would be unreasonable for the landlord to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The landlord was represented at the hearing by an agent, his mother, PH ("landlord's agent"). Both of the tenants attended the hearing and were accompanied by an advocate, CH. The tenants confirmed receipt of the landlord's Notice of Expedited Hearing package at the outset of the hearing. The tenants did not submit any documentary evidence for the hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to prove the tenants pose an immediate and severe risk to the rental property, other occupants or the landlord AND it would be unreasonable for the landlord to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord's agent gave the following testimony. The rental unit is the upper unit of a house containing the (rented) upper unit and a lower unit that was unfinished. The house was purchased by her son (the landlord named in this hearing) and her son's cousin when the son was 17. On June 21, 2021, the son became the sole owner of the house after buying his cousin out.

The month to month tenancy began between a year and two years ago with rent set at \$1,700.00 per month, payable on the first day of each month. The landlord collected a security deposit of \$850.00 which he continues to hold. The parties did not sign a written tenancy agreement at the commencement of the tenancy.

At the time he became to sole owner, the lower unit required renovations. The landlord planned on having his daughter move into the lower unit. He served the tenants with a Two Month Notice to End Tenancy for Landlord's Use on June 16th which the tenant acknowledges receiving on that date. The notice was disputed by the tenants and a hearing date has not yet been set. The file number for the other dispute is recorded on the cover page of this decision.

The landlord argues that the house has always been registered with the city as having two distinct suites, A and B. After serving the tenants with the Two Month Notice to End Tenancy for Landlord's Use, the landlord began doing renovation work on the unoccupied lower suite to make it suitable for occupation by the landlord's daughter. The landlord's agent testified the landlord got a permit to divide the hydro between the two suites so each one had their own electrical box. Prior to this, the landlord had provided the tenants with a key to the lower unit in order for the tenants to have emergency access to the single electrical box.

Other work was scheduled to be done by contractors hired by the landlord, however the tenants have been disruptive and harassing towards the contractors, preventing them from doing the work they were hired to do. The landlord's agent cites an incident on June 26, 2021 whereby she alleges the tenant threw a drill at the contractor's dog, hitting him with it. The landlord's agent referred me to video evidence of the incident. The landlord's agent also submits that the tenants cause disruption to the neighbourhood and referred me to a written statement of a neighbour who says she was verbally assaulted by the male tenant. In her statement, the neighbour says there is now a concern for her and her family's safety.

The landlord's agent submits that the city allows construction starting at 8:00 a.m., however the landlord did not provide any documentation from the city to corroborate this. The landlord's agent testified that they posted a note to the door of the lower unit advising that work will be from 8:00 a.m. to 9:00 p.m. daily and that only authorized workers are allowed entry. That note went missing after it was posted. Each time a worker comes to do work on the lower unit, the tenant harasses them and the police have been called on 5 separate incidents. The police have advised the workers to cease working and leave the job site because of the tenant's harassment. The landlord's agent states the landlord is losing money because the workers charge the landlord a minimum of 4 hours work, even though they have to leave shortly after arriving at the jobsite.

Lastly, the landlord's agent alleges that the tenant has been thwarting their ability to do work on the lower unit by parking his vehicle up against the entrance to the lower unit. The landlord's agent referred me to photos of the vehicle during testimony.

The tenants gave the following testimony. The tenancy began on June 1, 2020. They have never met the landlord's agent, his mother and were expecting the named landlord to attend the hearing. The agreement was for the tenants to rent the house, including the entire residential property from the landlords (the named landlord and his cousin)

and the landlords verbally agreed they would not renovate the lower unit for 2 years. In October 2020, the landlord moved another person onto the property, living in a 5th wheel RV. The landlord did not seek the tenants' approval or permission to have another person live on the property and the new person took his hydro power from the tenants' electricity which was registered in the tenants' name. That new person eventually moved a trailer, a boat, another camper and 2 dogs onto the property.

The tenants' hydro went up because of the new person living on the property and although the new person no longer lives there, the tenants are still paying off the bill. The new person left behind the trailer and boat when he left.

The tenants testified that the lower unit was previously used as a grow op. by the landlord. The property is filled with black mold and any renovations done to it exacerbates pre-existing health conditions for the female tenant who is a person with chronic disabilities. The tenant understands the landlord wants to perform renovations on the lower unit but the contractors hired by the landlord start working at 7 o'clock in the morning. The tenants wanted to leave their upper unit and get out of the house while the renovations were being done to the lower unit. The tenants testified that work starting at 7 instead of their preferred time of 9 is disruptive to their sleep and ability to leave the house in peace.

The tenants dispute that only the upstairs is rented by them, stating that their ping-pong table is located downstairs. The landlord and his cousin told them they could use it and provided them with a key. Now, since the landlord has changed the lock, they have no access to the electrical panel.

Regarding the incident on June 26th, the tenant argues that the contractor showed up without any notice to the tenants. The male tenant tried to explain to the contractor that his wife has health conditions but the contractor refused to listen and started making noise. He never threw a drill at the contractor's dog – he put his foot on the edge of a window causing the drill and a bucket to fall. He would never harm an animal.

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.

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).*

In this case, I find the landlord has not provided sufficient evidence to satisfy me there is a serious threat to the landlord or his family's health, safety or security. Nor is there any serious threat to the health, safety or security of another occupant. Although the tenant's neighbour voices concerns for her safety and security, section 56 is clear, only the jeopardized health, safety and security of the landlord or another occupant of the rental property qualifies as grounds for an early end to tenancy. Likewise, the potential health, safety and security concerns of a contractor hired by the landlord or the contractor's dog do not qualify as grounds for me to end a tenancy under section 56 of the *Act*. I note here that the video evidence supplied by the landlord does not appear to depict any throwing of a drill at the contractor's dog.

While it can be argued that the tenant may have potentially jeopardized the lawful right or interest of the landlord by disrupting the renovations taking place in the lower unit, the landlord has failed to provide sufficient evidence to satisfy me the tenants' actions were serious enough to justify an emergency end to the tenancy. As the policy guideline states, I must be satisfied there is an ***imminent*** danger to the health, safety or security of the landlord or another occupant before I can justify allowing the landlord to end the tenancy without serving the tenant a formal Notice to End Tenancy for Cause and providing the tenant with the one month to take effect before vacating. In other words, the situation created by the tenants must be extreme and require immediate action. I do not find this to be the case here.

Based on the testimony and evidence before me, I accept that the Landlord may have potential grounds to end this tenancy for cause however I am not satisfied that the situation is so urgent that the tenancy should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I find that the Landlord failed to provide sufficient evidence that this tenancy should end early pursuant to Section 56 of the *Act*.

As a result, I dismiss the Landlord's Application to end the tenancy early.

Conclusion

The landlord's application for an early end to tenancy pursuant to section 56 of the *Act* is dismissed without leave to reapply.

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: August 13, 2021

Residential Tenancy Branch