



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ricechild Management Ltd dba Bayview
Apartments and [tenant name suppressed to protect privacy]

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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the Application and evidence. The landlord testified that they were only served with a portion of the tenant's evidentiary materials. The contents of the evidentiary materials were confirmed during the hearing. The tenant submitted a five page response to the landlord's application, which was confirmed as served to the landlord, and submitted for consideration. As this package was confirmed as served and reviewed by the landlord, I find this package duly served on the landlord in accordance with the *Act*. Any additional materials that were not served or uploaded was excluded for the purposes of this hearing. Both parties confirmed that they were prepared to proceed with the scheduled 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 tenancy originally began as a fixed-term tenancy on September 1, 2020, with monthly rent set at \$1,700.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$850.00, which the landlord still holds. The tenancy has continued on a month-to-month basis, and the tenant continues to reside in the rental unit.

The landlord served the tenant with a 1 Month Notice dated June 29, 2021, with an effective date of August 1, 2021 for noise disturbances caused by the tenant. The tenant filed an application to dispute the 1 Month Notice, and a hearing is set for November 5, 2021 to deal with the tenant's application.

The landlord filed this application for an early termination of this tenancy on August 27, 2021. The landlord testified that they are seeking the end of this tenancy as they feel that the noise and disturbance caused by the tenant or their guests have not abated, and have gotten worse. The landlord testified that they continue to receive numerous complaints about the tenant or their guests, and that neighbouring tenants are moving out. The landlord testified that another occupant in the rental unit, who was identified as the tenant's son, was observed in minimal clothing in the common areas causing a significant level of disturbance which included yelling and screaming. The landlord testified that they are not able to rent out the unit near the tenant's, and that the behaviour has caused others to be fearful for their safety in the 96 unit building.

The landlord testified that a significant amount of noise is caused by the occupants in the rental unit, which include treadmill noise, and loud noise late at night. The landlord testified that the tenant has failed to address the complaints and concerns, and the disturbance has gotten worse.

The tenant disputes the claims, and testified that no significant risk, harm, or threat has been sufficiently supported by the landlord to justify the ending of this tenancy pursuant to section 56 of the *Act*. The tenant testified that the tenant's son was wearing shorts, shoes, and socks during the heat dome, and was not inappropriately dressed, or acting in an inappropriate or threatening manner. The tenant also disputes the noise

complaints, and confirms that they have purchased a treadmill for walking as recommended by their physician for health reasons. The tenant disputes that they run on the treadmill as they are incapable of doing so.

Analysis

The landlord, in their application, requested an Order of Possession on the grounds that the tenant and their guests have acted in a threatening or disturbing manner, and continue to do so.

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 tenants have 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*.

Although the landlord testified to the issuance of a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, the landlord has not applied for an Order of Possession pursuant to this 1 Month Notice. A hearing is set for November 5, 2021 to deal with the tenant's application to cancel the 1 Month Notice. The landlord, in their application, is attempting to obtain an early end to tenancy as they feel that they cannot wait any longer due to the amount of complaints, and escalating nature of the disturbance caused by the tenant or their guests.

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.

Although the landlord issued a 1 Month Notice for Cause on or about June 29, 2021, the landlord did not file an application for an Order of Possession pursuant to that 1 Month Notice. Although the landlord provided testimony and evidence to highlight the numerous complaints received about the tenant or their guests, I am not satisfied that the landlord provided sufficient evidence to support that the behaviour is significant or serious enough to bypass the standard process of obtaining an Order of Possession pursuant to the 1 Month Notice.

I find that the landlord's failure to pursue an Order of Possession pursuant to the 1 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. 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. Although the landlord does have a duty to ensure the peaceful and quiet enjoyment of all residents in the building, I find that the incidents described do not qualify for an Order of Possession under section 56 of the *Act*. 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: September 22, 2021

Residential Tenancy Branch