



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On August 23, 2021, the Landlords made an Application for Dispute Resolution seeking an Order of Possession based on an early end of tenancy pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was then set down for a hearing on September 24, 2021 at 9:30 AM.

Both Landlords attended the hearing, with A.B. attending as an agent for the Landlord. However, the Tenant did not attend at any point during the one-hour teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of A.B., provided a solemn affirmation.

A.B. advised that the Tenant was served the Notice of Hearing package and some evidence by posting it to the Tenant’s door on September 8, 2021, and proof of this service was submitted as documentary evidence. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served the Notice of Hearing package and some evidence.

She advised that additional evidence was submitted to the Residential Tenancy Branch and served to the Tenant on September 23, 2021. As this evidence was served late, this additional evidence will be excluded and not considered when rendering this Decision. However, the Landlords’ evidence served with the Notice of Hearing package will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

A.B. submitted that the tenancy started on November 1, 2019, that rent was reduced from \$1,500.00 to \$1,400.00 per month, and that it was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

A.B. advised that the Landlords were seeking an early end of tenancy for a number of issues, including not being able to access the rental unit, the locks being changed, garbage being throw out of the windows, and non-compliance with a by-law. However, as noted during the hearing, this type of Application is reserved for the most severe of circumstances. The threshold for establishing an early end to the tenancy is extremely high and exceeds that which is required to justify an end of tenancy based on a One Month Notice to End Tenancy for Cause. As such, these issues listed do not satisfy this threshold and only the following issues will be considered under this type of Application.

She advised that the Tenant lives in the same property and there is a central HVAC system where the air is distributed throughout the entire property. She stated that the Tenant acquired birds and allowed them to fly freely within her own rental unit, and that this was contrary to a municipal by-law. She submitted that the Landlords have a newborn baby whose cough worsens when near the door that adjoins the Tenant's

rental unit to the Landlords' space. She speculated that the baby is suffering from "some sort of medical condition" due to the nearby presence of the Tenant's birds that are not caged. She stated that the Landlords are concerned with any possible diseases that could be transferred because of this scenario.

She confirmed that there has been no medical documentation provided to support the allegation of any health concerns, nor were any documents submitted to establish that there are potential allergens or diseases that have been introduced from the Tenant's rental unit.

Landlord S.N. advised that the other reason they were seeking an early end of tenancy was because they were home on September 18, 2021 when they observed the Tenant open the door, that adjoins the units, and walk into the Landlords' residence. The Landlords had another family member present who also witnessed this incident. As this door was always locked, they were not sure how the Tenant was able to open it, but they believe the Tenant broke into their residence. When the Tenant saw them, she closed the door and returned to her rental unit. As the Landlords were frightened for their safety, they contacted the police.

She testified that the police attended and questioned the parties. She stated that while they were standing there with the police officer, the Tenant threatened in Hindi that the Landlords' child "would be killed". She advised that she translated this threat to the police officer, that the officer informed her that he could not do anything as it was a residential tenancy matter, and that he suggested that they find alternate accommodations to live in if they did not feel safe.

Landlord K.R. testified that he, and their cousin, were also present when the Tenant went into the Landlords' space and when the Tenant uttered the death threat in front of the police officer. He stated that they do not feel safe living on the property, and they are concerned for their welfare. He submitted that since this incident, they have been living with their in-laws.

A.B. advised that it has been difficult to contact the investigating officer to obtain any further information pertaining to his attendance on September 18, 2021. However, she confirmed that no charges had been laid against the Tenant for any purported break-in or death threats.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlords to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. 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.

As noted above, this type of Application is reserved for the most severe of circumstances, the threshold for establishing an early end to the tenancy is extremely high, and that the onus rests with the Landlords to establish their claims.

When reviewing the totality of the evidence before me, it is clear that the Landlord/Tenant relationship is strained and is tenuous at best. With respect to the incidents described that may qualify for an early end of tenancy, I find it important to note that the Landlords have not submitted any documentation to confirm their speculation that there are potential allergens or diseases that have been introduced by

the Tenant or her birds. In addition, they have not submitted any medical documentation to corroborate that anyone has suffered from any medical or health conditions that could be linked to the presence of the Tenant's birds. It appears as if the Landlords are merely making a speculative connection. Without any compelling or persuasive evidence to confirm their allegations, I am not satisfied that this speculation as described by the Landlords would satisfy the high threshold to warrant an early end of the tenancy.

Regarding the incident where the Tenant allegedly broke into the Landlords' premises and uttered a death threat, I place some weight on both of the Landlords' solemnly affirmed testimony that they witnessed these incidents. However, I find it curious that if the police attended the scene to investigate a potential break and enter, why there has been no police report or evidence confirming that this was determined to be the case.

Moreover, the Landlords alleged that the Tenant uttered a death threat in their presence and in front of the officer, and that they translated this threat directly to the officer at the time. I find it reasonable to conclude that a threat, such as the one alleged by the Landlords, is one that is very serious in nature. However, there is no evidence that the officer took any action with respect to this threat. I find it unlikely that had such a direct, grave threat been uttered in front of the officer at that time, that he would not have responded in a manner that would be perceived as a proportionate response.

Given that there appears to have been an absence of commensurate police action taken, or charges laid against the Tenant, for breaking and entering and/or uttering threats, I am not satisfied that the Landlords have sufficiently corroborated that these incidents in fact occurred. As such, I do not find that they have satisfactorily justified the high threshold for establishing an early end of the tenancy on this point.

In reviewing the evidence before me, I find it likely that the Tenant has engaged in many actions and detrimental behaviours that would likely support the formation of, and the justification for, ending the tenancy with a One Month Notice to End Tenancy for Cause. However, with respect to this type of Application, I do not find that any of the Landlords' submissions have met the burden of proof to satisfy the elevated threshold to warrant ending this tenancy early.

Consequently, I find that the Landlords are not entitled to an Order of Possession, and I dismiss this Application in its entirety.

As the Landlords were not successful in this Application, I find that the Landlords are not entitled to recover the \$100.00 filing fee.

Conclusion

Based on the above, I dismiss the Landlords' Application 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: September 24, 2021

Residential Tenancy Branch