



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET FFL

Introduction

On September 29, 2021 the landlords made an application for dispute resolution in which they sought an order ending the tenancy early, pursuant to section 56 of the *Residential Tenancy Act* ("Act"). In addition, they sought to recover the cost of the filing fee, pursuant to section 72 of the Act.

One of the landlords attended the hearing on October 26, 2021 at 9:30 AM. The tenant did not attend the hearing, which ended at 9:41 AM.

The landlord testified that he served a copy of the Notice of Dispute Resolution Proceeding on the tenant by attaching it on the front door of the rental unit at 10:15 PM on October 4, 2021. I am satisfied based on the undisputed oral evidence provided that the tenant was served in compliance with Act and the *Rules of Procedure*.

Issues to be Decided

1. Are the landlords entitled to an order under section 56 of the Act?
2. Are the landlords entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on February 23, 2021. Monthly rent is \$1,000.00, and the tenant paid a \$1,000.00 security deposit. One page of the tenancy agreement was in evidence.

The landlords have made this application because of the tenant's behavior and conduct, most notably during the following three events (paraphrased, but as described in the landlords' written submission and confirmed in testimony at the hearing):

- August 15, 2021 – tenant and husband outside of rental unit yelling and using foul language in front of the landlords' young children (ages 8 and 11); police attended and physically restrained the tenant
- August 20, 2021 – tenant yelled “millimeters from my wife's face”; tenant threatened the landlords, saying “my [the landlords'] kids can be removed.”
- August 21, 2021 – tenant was interfering in a family gathering that we were hosting. Again yelling, trying to gain attention from the landlords' guests.

The landlord testified that his kids are scared to play outside in their own yard. The landlord further testified that the tenant threatened the kids but did not elaborate. Last, the landlords' written submission states that the “situation has become very difficult. My family and I fear for our safety. Due to [tenant's] erratic behavior.”

Note: it should be noted for the record that the hearing telephone line went “dead” at approximately five minutes into the hearing. According to TELUS there was a server issue. I subsequently dialled into the hearing using a mobile phone and continued with the hearing and asked the landlord to continue his testimony.

Analysis

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied 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;
 - (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord 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.

In this case, the evidence persuades me to find that the tenant has, on three occasions, likely unreasonably disturbed the landlord and other occupants (the landlords' children) at the residential property. Yelling, using foul language, and threats to have children removed is completely unacceptable.

What I am not satisfied by, based on the evidence, is why a One Month Notice to End Tenancy for Cause – versus making an application for an expedited hearing – could not have been made. The three incidents referenced in the landlords' written submission occurred in a tight cluster on August 15, 20, and 21. However, the landlords did not make an application for dispute resolution until more than a month after the incidents. This lengthy delay between the incidents occurring and filing an application raises the question as to whether this was, or is, truly an urgent matter requiring an order under section 56 of the Act.

Therefore, taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their application for an order ending the tenancy early under section 56 of the Act. Accordingly, the landlords' application is dismissed. Last, the claim to recover the cost of the application filing fee is dismissed.

All of this said, the landlords may issue and serve a [One Month Notice to End Tenancy](#) if the tenant's behavior continues. Alternatively, if the tenant's behavior worsens, then the landlords may apply for an order under section 56 of the Act. However, it is

important that the landlords make this application in a timelier manner than the present application.

In addition, if the tenant fails to pay the full rent when it is due then the landlords may issue a [10 Day Notice to End Tenancy for Unpaid Rent](#).

Conclusion

The landlords' application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 26, 2021

Residential Tenancy Branch