



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 an Application for Dispute Resolution by the Landlord filed under *the Residential Tenancy Act* (the “*Act*”) for an early end of tenancy pursuant to section 56 of the *Act* and an order to recover the cost of filing the application from the Tenant.

An Agent for the Landlord (the “Landlord”) attended the hearing. The Agent was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been posted to the Tenant door on November 16, 2021. The Landlord provided photographic evidence of the notice attached to the Tenant’s door and a signed witness statement as proof of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been served three days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an early end of tenancy and an Order of Possession, under section 56 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement recorded that this tenancy began on August 1, 2021, as a one-year fixed term tenancy. Rent in the amount of \$1,350.00 is to be paid by the first day of each month, and that the Tenant had paid a \$675.00 security deposit. The Landlord provided a copy of the tenancy agreement into evidence.

The Landlord testified that on November 6, 2021, they had received a complaint from the property manager of the neighbouring unit regarding the Tenant banging on their door and allowing unknown people into the building. The Landlord testified that the Tenant had taped a note to the neighbouring units door that was threatening. The Landlord submitted a copy of the note into documentary evidence.

The Landlord testified that on November 10, 2021, they had received a second complaint from the property manager of the neighbouring unit regarding the Tenant had again been banging on their door and that the police were called this time to deal with the Tenant. The Landlord testified that the neighbour had refused to make a written complain or provide a statement to the Landlord for these proceedings regarding the Tenants actions.

The Landlord testified they had thought they could enforce a mutual agreement to end the tenancy during this hearing. I explained that this hearing was based on an application for an Early End of Tenancy (ET) under section 56 of the *Act* and that this hearing could only deal with matters related to the ET. I also explained the ET application process and how these applications are given a priority hearing date. The Landlord was informed that any request for an Order of Possession to enforce a mutual agreement to end tenancy under section 44 of the *Act* would have to be dealt with in another hearing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an Early End to Tenancy and 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, a landlord has the burden of proving that:

- There is sufficient cause to end the tenancy such as; unreasonably disturbed another occupant, seriously jeopardized the health, or safety, or a lawful right, or interest of the landlord, engaged in illegal activity, or put the landlord's property at significant risk; and
- That it would be unreasonable or unfair to the landlord or other occupants to wait for a one month notice to end tenancy for cause under section 47 of the *Act* to take effect.

In this case, while the Tenants conduct may have been disturbing to others, I find there is insufficient evidence to show that the circumstances of this case are so significant or severe that it would have been unreasonable for the Landlord to have to wait for a One Month Notice to take effect if there was sufficient cause to end the tenancy. Therefore, I find that the Landlord did not satisfy me that this tenancy should end early under section 56 of the *Act*.

Therefore, I dismiss the Landlord's application for an early end of tenancy under section 56 of the *Act*, as I find it neither unreasonable nor unfair that the Landlord would need to wait for a One Month Notice to take effect and for the required hearing process under that notice.

As I have dismissed the Landlord's application, the Landlord is not entitled to recover the filing fee.

Conclusion

I dismiss the Landlord's application for an early end of tenancy and to recover their application fee. 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: November 30, 2021

Residential Tenancy Branch