



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlords applied:

- to end a tenancy early, pursuant to section 56 of the Act; and
- to recover the filing fee from the Tenant, pursuant to section 72 of the Act.

One of the Landlords called into the hearing; the Tenant did not. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified they served the Notice of Dispute Resolution Proceeding (NDRP) on the Tenant by registered mail on November 13, 2021. The Landlord provided a Canada Post tracking number as proof of service. Pursuant to section 90 of the Act, I find the NDRP is deemed to have been received by the Tenant on November 18, 2021, five days after they were sent by registered mail. The Landlord testified they served their evidence on the Tenant by registered mail on January 3, 2022. The Landlord provided a Canada Post tracking number as proof of service. Pursuant to section 90 of the Act, I find the Landlord's evidence is deemed to have been received by the Tenant on January 8, 2022, five days after it was sent by registered mail. Based on the Landlord's testimony and evidence, I find the Tenant was served in accordance with section 88 of the Act.

Issues to be Decided

- 1) Are the Landlords entitled to an early end of tenancy and an order of possession?
- 2) Are the Landlords entitled to the filing fee?

Background and Evidence

The Landlord provided the following details regarding the tenancy. It began on March 29, 2016; rent is \$850.00 a month, due on the first of the month; and the Tenant paid a security deposit of \$250.00, which the Landlord still holds. The Tenant lives in the basement suite of the Landlords' home.

The Landlord testified that on December 17, 2021, the Tenant was yelling and swearing, and tried to break into the Landlords' portion of the home, via the connecting door. The Landlord submitted as evidence an image of an email on a cell phone. The Landlord testified this was a police report regarding the incident. The body of the email is visible, but the sender and receiver information is not visible. The email quotes a police file number, states they attended the residence to speak with the Tenant "in person regarding your concerns for safety of all residents within the house and also warn him of his criminal code jeopardy for break and enter and mischief as discussed." The email states that as the Tenant did not answer his door or cell phone, the writer will follow up with him again tomorrow. The email states: "Please utilize the Safety plan we discussed earlier and contact 911 should you believe [the Tenant] is attempting to breach the door and enter your side of the residence."

The Landlord testified that during the incident, they and their family left the house because they did not feel safe, and because they wanted to shield their young children from the very frightening and potentially dangerous situation.

The Landlord testified that the next day, December 18, 2021, the Tenant was yelling, swearing, and banging on the door connecting the two units, so the Landlords again called the police, who attended and removed the Tenant. The Landlord testified that the police had entered the rental unit, and stated that the Tenant had broken down all the drywall in the unit, and that there was also considerable mold present. The Landlord testified they have not seen the damage for themselves yet, as the police said they may not enter the rental unit.

The Landlord provided as evidence a photo of an RCMP member's business card, which they said was left with them after the December 18, 2021 incident.

The Landlord also testified that the Tenant has damaged the kitchen appliances. The Landlord testified the Tenant has broken the glass in the front of the stove, dented the door of the refrigerator, and broken the door handles of the refrigerator.

The Landlord testified they don't feel safe in the home, and "cannot go into the house without security," as they are so frightened. The Landlord testified it is not safe to be there, and that the situation is not good for their young children.

Analysis

Based on the above undisputed affirmed 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 (1) an early end to tenancy, and (2) 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.

When seeking to end a tenancy early and obtain 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: the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or caused extraordinary damage to the residential property; **and**
- 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.

I accept the Landlord's affirmed testimony and documentary evidence that the Tenant has twice behaved in a violent manner during two incidents in two days, by yelling, swearing, and attempting to break into the Landlords' unit, and by banging on the door connecting the two units. I accept the Landlord's testimony that they do not feel safe in their unit, they felt the need to call the police for assistance twice in two days, and that they are concerned about the impact of the violence on their two young children, who live in the home.

I accept the Tenant's affirmed testimony that the Tenant has caused significant and extensive damage to the home, including breaking down the drywall in their rental unit.

I find that, in accordance with section 56 of the Act, the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlords, and caused extraordinary damage to the residential property; and, that it would be unreasonable or unfair to the Landlords or other occupants to wait for a One Month Notice to End Tenancy For Cause under section 47 of the Act to take effect.

I find the Landlords are entitled to an early end of tenancy and an order of possession.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords are successful in their application, I order the Tenant to pay the \$100.00 filing fee the Landlords paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the Landlords to retain \$100.00 of the Tenants' security deposit in satisfaction.

Conclusion

The Landlords' application is granted.

I grant the Landlords an order of possession, which is effective two days after it is served on the Tenant.

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: January 25, 2022

Residential Tenancy Branch