



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 the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 20 minutes. Landlord SL ("landlord") and the landlords' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing began at 9:30 a.m. and ended at 9:50 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the landlord's agent, and I were the only people who called into this teleconference.

The landlord provided his name and spelling. He stated that his daughter, who is his agent, had permission to speak on his behalf at this hearing, since he could not speak English well. The landlord did not want to testify at this hearing.

The landlords' agent provided her name, spelling, and confirmed the rental unit address. She stated that the landlord and the other two landlords named in this application co-owned the rental unit together. She confirmed that she had permission to represent all three landlords at this hearing. She provided her email address for me to send a copy of this decision to the landlords after the hearing.

At the outset of this hearing, I informed the landlords' agent that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"). The landlords' agent affirmed, under oath, that neither she, nor the landlord, would record this hearing.

I explained the hearing process to the landlords' agent. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlords filed this application on February 7, 2022, and a notice of hearing was issued by the RTB on February 8, 2022. The landlords were required to serve that notice, the application, and all other required evidence in one package to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlords' agent stated that the tenant was served with the landlords' application for dispute resolution hearing package on February 9, 2022, by way of posting to the tenant's rental unit door. The landlords provided a signed, witnessed proof of service to confirm same. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on February 12, 2022, three days after its posting.

The landlords' agent testified that the tenant was served with the landlords' video evidence for this hearing, by way of text message. I informed the landlords' agent that I could not consider the landlords' one video at this hearing or in my decision because it was not served to the tenant in accordance with section 88 of the *Act*, which does not permit text message service. She confirmed her understanding of same.

Issues to be Decided

Are the landlords entitled to end this tenancy early and to obtain an Order of Possession?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of the landlords' agent at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords' agent stated the following facts. This tenancy began on November 1, 2021. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Monthly rent in the amount of \$3,000.00 is payable on the first day of each month. No security or pet damage deposits were paid by the tenant to the landlords. The tenant continues to reside in the rental unit, as the landlords' agent has been in contact with him, by way of text messages.

The landlords' agent testified regarding the following facts. The tenant has not paid the hydro electricity bill for the rental unit. The hydro company asked the landlord to pay for it, but the landlord refused because he said he does not occupy the rental unit. The tenant is using generators inside the house, which is a fire hazard. The landlord called the fire department, but without proof they cannot go into the rental unit. The tenant caused a water leak at the rental unit. The tenant is supposed to pay the water bill because it is in the landlord's name. The landlord has knocked on the tenant's door, called the City, the water has been turned off, the landlord has provided a 24-hour notice of inspection, and the tenant has refused access to the rental unit. The landlord does not understand how the tenant can live at the rental unit without water or electricity. It is a fire hazard if the tenant is using a generator when the electricity and water are shut off at the rental unit.

The landlords' agent stated the following facts. The landlord thinks there is damage in the rental unit from the tenant. The tenant is "blackmailing" the landlord because he is threatening to sue the landlord about the mold and roof leak. The tenant is calling the landlord all the time. The tenant has rented the bottom half of the basement of the rental unit to other occupants, without the landlords' permission. The landlord talked to these other occupants, who were going back and forth, and they told the landlord that they live at the rental unit, but they plan to move out. The tenant has "hostile relations" with these occupants. The landlord has issued a One Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenant on January 1, 2022. The landlord did not provide a copy of this notice for this hearing but can do so after the hearing. The landlord issued a 10 Day Notice for Unpaid Rent or Utilities ("10 Day Notice") to the

tenant because the tenant has not paid rent. The landlord did not provide a copy of this notice for this hearing but can do so after the hearing.

Analysis

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlords' agent did not properly present the landlords' claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. The landlords only submitted photographs of text messages, as evidence for this hearing.

This hearing lasted 20 minutes and only the landlord and his agent attended the hearing, as the tenant was not present. The landlords' agent had ample opportunity to present this application. However, the landlords' agent did not go through any of the landlords' documentary evidence submitted for this hearing. I repeatedly questioned the landlords' agent if she had any other information to present for this hearing and gave her multiple opportunities for same.

Section 56 of the *Act* requires the landlords to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlords or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlords must show, 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...*

The landlords' agent did not testify about which one of the above parts of section 56(a) of the *Act*, are relevant to this application.

The landlords' agent referred to a leak, "blackmail," a fire hazard, using generators, and the tenant renting out the basement to other occupants without permission. The landlords failed to provide sufficient documentary evidence of same. The landlords' agent did not indicate when any of the above events occurred or for how long they have been occurring.

The landlords' agent repeatedly referred to the tenant's non-payment of rent and utilities and the fact that a 10 Day Notice was issued to the tenant. A copy of this notice was not provided for this hearing. Payment of rent and utilities are not relevant issues, as they are not contained in section 56 of the *Act* above.

On a balance of probabilities and for the reasons stated below, I find that the landlords' application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlords did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlords failed to show the urgency of this situation to demonstrate that it would be “unreasonable” or “unfair” to wait for a 1 Month Notice to be determined. The landlords’ agent stated that a 1 Month Notice was issued to the tenant on January 1, 2022. However, she did not indicate the details on the notice, such as the effective date, the reason the notice was issued, or the details of the cause. The landlords did not provide a copy of the 1 Month Notice for this hearing. The landlords had ample time to provide evidence prior to this hearing, as this application was filed on February 7, 2022, and this hearing occurred on February 22, 2022.

Accordingly, I dismiss the landlords’ application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlords’ entire application is dismissed 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: February 22, 2022

Residential Tenancy Branch