



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Applicants seek an early end to a tenancy pursuant to s. 56 of the *Residential Tenancy Act* (the “*Act*”) and the return of their filing fee pursuant to s. 72.

J.J. appeared as advocate for the Applicants. N.R. appeared on her own behalf as Respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

J.J. advised that the Respondent was served with the Notice of Dispute Resolution and evidence by way of email sent on March 4, 2022. The Respondent confirms receipt of the same and consented to service by way of email. I find that the Notice of Dispute Resolution and evidence was served in accordance with s. 89 of the *Act*.

The Respondent confirmed that she served no evidence in response to the application.

Issue(s) to be Decided

- 1) Are the Applicants entitled to end the tenancy early without notice?
- 2) Are the Applicants entitled to the return of the filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed that the Respondent began to occupy the subject rental unit on May 1, 2017. The rental unit is a single detached home. The Applicants are listed as landlords in the application.

The Respondent advised that she vacated the rental unit in April 2021 following tragic circumstances. I was told that the Respondent had roommates who continued to reside within the rental unit after she vacated in April 2021. The Respondent says that she verbally told the Applicant landlords in April 2021 that she was leaving the rental unit and that she would continue to pay the rent and collect the same from the roommates. There are currently three roommates living within the rental unit. These points are not disputed by the Applicants.

The Respondent further stated that she asked the Applicants in November 2021 that they should collect rent directly from the roommates. The Respondent says this was done because she no longer wished to deal with the stress of doing so.

I am told by the Applicants' agent that the roommates did not pay rent in full in December 2021 or thereafter.

I am told that there has been significant damage to the rental unit by the roommates. The Applicants' agent indicates that the Respondent is not responsible for the damage but indicated that there was no tenancy agreement with the roommates.

The parties confirmed that they signed a mutual agreement to end tenancy on February 18, 2022. The Applicants' agent confirmed that the application was filed on the same day after the mutual agreement was signed and that the Applicants seek an order for possession pursuant to the mutual agreement to end tenancy so that the roommates can be removed.

The Applicants' agent indicated that the roommates were made aware of this hearing by posting the Notice of Dispute Resolution to the door. The Respondent confirmed that the roommates are aware of the hearing.

Analysis

The Applicants seek an order for possession pursuant to s. 56.

The present circumstances are unusual. It is not clear to me whether the tenancy between the Applicants and the Respondent is still in effect or has ended. I make no findings with respect to this issue given my findings below.

The fundamental issue with the present application is that the Applicants are not seeking an order for possession under s. 56. As made clear by the submissions of the Applicants' agent, the Applicants (and the Respondent for that matter) seek an order for possession pursuant to the mutual agreement to end tenancy signed on February 18, 2022. Indeed, the application was filed on the very same day.

The application is not one where they Landlord seeks an early end to a tenancy, rather it is one where the parties seek to enforce a purported agreement to end the tenancy. Given this, s. 55(2)(d) would be the appropriate claim if one were made, not one under s. 56.

Policy Guideline #51 cautions against permitting parties from using the expedited hearing process as a form of queue jumping. Though this guidance is specifically related to amending applications for expedited hearings, I find the guidance relevant to the present circumstances.

I find that the present application was improperly filed as an early termination under s. 56 when it is really an attempt by the Applicants to obtain an order for possession through the expedited process for an order that can only be granted pursuant to s. 55. Accordingly, the application is dismissed.

Conclusion

The application is dismissed as the Applicants are not seeking an order under s. 56, rather they seek to enforce a purported agreement to end the tenancy. If this were to be granted, it would be a claim under s. 55, not s. 56. The application is improperly pled and is therefore dismissed without leave to reapply.

The Applicants were unsuccessful in their application. Accordingly, I dismiss their claim for the return of their filing fee under s. 72 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: March 11, 2022

Residential Tenancy Branch