



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 14, 2022 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord sought to call the Witness at the hearing. The Witness was not involved in the hearing until required. After hearing from the Landlord about the purpose of calling the Witness, I told the Landlord I would not hear from the Witness. The reasons for this are set out below.

Both parties submitted evidence prior to the hearing. The Tenant confirmed receipt of the hearing package and Landlord’s evidence and did not raise an issue with service. The Landlord testified that they did not receive the Tenant’s evidence. The Tenant testified that they did not serve their evidence on the Landlord.

I found the Tenant failed to comply with rule 3.15 of the Rules in relation to serving their evidence on the Landlord. I heard the parties on whether the evidence should be admitted or excluded. The Landlord submitted that the evidence should be excluded and the Tenant submitted that the evidence should be admitted. I excluded the

evidence pursuant to rule 3.17 of the Rules because I found it would be unfair to admit it when the Landlord had not seen it and could not address it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted in evidence and the parties agreed it is accurate. The tenancy started July 01, 2020, and is for a fixed term ending June 30, 2022.

The Landlord sought to end the tenancy early based on the Tenant having a dog in the rental unit contrary to the terms of the tenancy agreement. The Landlord submitted that the Tenant having a dog in the rental unit is serious enough to end the tenancy pursuant to section 56 of the *Act* because the tenant who was living upstairs has health conditions that have been aggravated or caused by the Tenant having a dog in the rental unit. The Landlord testified that the upstairs tenant has now moved out of the rental unit because of the dog. The Landlord sought an Order of Possession effective one month after service on the Tenant.

The Tenant acknowledged having a dog in the rental unit for three weeks. The Tenant denied that the dog is currently in the rental unit and testified that it is staying with someone else. The Tenant disputed that the upstairs tenant's health conditions were aggravated or caused by the dog.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause issued under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 56 of the *Act* is reserved for the most serious of circumstances, for example, threatening or violent behaviour by a tenant.

I am not satisfied that the Tenant having a dog in the rental unit is serious enough to warrant ending this tenancy without notice pursuant to section 56 of the *Act*. The Landlord submitted that the circumstances are serious because the dog has aggravated or caused health issues for the tenant who was living upstairs. However, as of the hearing date, the upstairs tenant had moved out and therefore any affect the dog had

on the upstairs tenant is no longer an issue and does not support ending the tenancy at this point pursuant to section 56 of the *Act*. Further, when asked at the hearing what the Landlord was seeking for an Order of Possession, the Landlord sought an Order of Possession effective one month after service on the Tenant which supports the position that this is not an urgent matter and could be dealt with by serving the Tenant a One Month Notice pursuant to section 47 of the *Act*.

I did not hear from the Witness because the Witness was going to testify about seeing the dog at the rental unit. Even accepting that the Witness saw the dog at the rental unit every day, this does not change my decision above which is that the Tenant having a dog in breach of the tenancy agreement is not urgent and not sufficient to end this tenancy pursuant to section 56 of the *Act*.

The Landlord has failed to prove that the circumstances meet the second part of the two-part test outlined above and therefore the Application is dismissed without leave to re-apply. The tenancy will continue until ended in accordance with the *Act*.

The Landlord is not entitled to reimbursement for the filing fee given they have not been successful in the Application.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 01, 2022

Residential Tenancy Branch