



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:05 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and the landlord's wife (the "agent") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 tenant did not call into this hearing.

The agent spoke on behalf of the landlord. The agent called witnesses S.D., M.R., S.M. and A.B.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that they were not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The agent confirmed the landlord's email addresses for service of this decision.

The agent testified that the tenant was served with the landlord's application for dispute resolution via posting on the tenant's door on April 21, 2021. Photographs of same were entered into evidence. The landlord entered into evidence a photograph of RTB Form 9 Proof of Service Notice of Expedited Hearing Dispute Resolution Proceeding, taped to a door. The photograph is not of excellent quality and all of the text cannot be made out; however, it is clear that the witness statement section on page 2 is only ½ filled out.

Witness S.M. testified that she witnessed the landlord post the Notice of Expedited Hearing documents on the tenants' door on April 21, 2021. Witness A.B. testified that he witnessed the landlord post the Notice of Expedited Hearing documents on the tenant's door but could not recall the date.

Based on the agent's testimony and the testimony of witnesses S.M. and A.B., I find that that the tenant was served with the Notice of Expedited Hearing documents on April 21, 2021, via posting, in accordance with section 89(2)(d) of the *Act*. Pursuant to section 90 of the *Act*, I find that the tenant was deemed served with the above documents on April 24, 2022, three days after their posting.

The agent uploaded additional evidence to the Residential Tenancy Branch on May 9 and 10, 2022. The agent testified that the above evidence was not served to the tenant on April 21, 2021.

Rule 10.2 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states:

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

I find that the evidence uploaded between May 9-10, 2022 is not admissible, because it was not served in accordance with Rule 10.2 of the *Rules*.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent and the landlord's witnesses, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the testimony heard, and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on April 1, 2022 and is currently ongoing. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord.

The agent testified that the landlord is seeking an early end to tenancy because the tenant is smoking constantly in the subject rental property, and it is disturbing the landlord and the neighbours. The agent testified that the advertisement for the basement suite states that the unit is non-smoking, but the tenancy agreement does not state same.

The agent testified that the tenant's mental health issues are frightening the neighbours. The agent testified that the tenant knocks on the neighbours' doors in an attempt to talk to them but the context of the tenant's speech does not make sense and makes the neighbours uncomfortable.

The agent testified that the tenant plays music from his car very loudly early in the morning. The landlord entered into evidence a text message which the agent testified was from a neighbour on April 12, 2022. The text message states:

Hi [agent], this is a complaint about your tenant that drives [car and license plate redacted for privacy], extremely loud radio approx. 6:30 am Apr. 7 or 8th. Parked in front of my house with his vehicle windows open for about 30 minutes. Treat this text as private and strictly confidential.

The landlord entered into evidence email complaints dated April 10, 11, 12 and 14, 2022 from K.P. who the agent testified was a neighbour, regarding the tenant's heavy smoking, loud t.v. and the tenant knocking on the door and speaking out of context which scared the neighbours.

Witness M.R. testified that she lives with her parents, the landlord and the agent, above the tenant and that the way the tenant looks at her and her 14-year-old daughter makes her feel very uncomfortable and creeped out. Witness M.R. testified that the tenant is always outside and always stares at her and her daughter when they come and go. Witness M.R. testified that on one occasion the tenant approached her when she was getting home and, through the car window, asked her if she was single. Witness M.R. testified that this made her very uncomfortable, and she had to call the landlord to come and walk her inside.

Witness S.D. testified that on one occasion the tenant parked his car so close to his, he was blocked in for six hours.

The agent testified that she constantly gets complaints about the tenant and is sick and tired of it.

The agent testified that the tenant has burned the countertop, and one time, when the landlord went to talk to the tenant about something, the stove was left on.

The agent testified that the tenant doesn't take out the garbage and this is attracting vermin. The landlord entered into evidence photographs of the subject rental property which show that it is dirty and messy.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of 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, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*

- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause]... to take effect.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

Residential Tenancy Branch Policy Guideline #51 states:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

[....]

Without sufficient evidence the arbitrator will dismiss the application.

While the actions of the tenant are concerning any may support an Order of Possession based on a One Month Notice to End Tenancy for Cause, I find that the landlord has not proved that it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

As noted above, an early end to tenancy is only for very serious breaches, I find that alleged noise complaints, smoking complaints, parking issues and disconcerting/inappropriate conversations are not serious enough to warrant an early

end to tenancy under section 56 of the *Act*. I therefore dismiss the landlord's application without leave to reapply.

As the landlord was not successful in this application for dispute resolution, pursuant to section 72 of the *Act*, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's application for dispute resolution 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: May 25, 2022

Residential Tenancy Branch