



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET, FFL

Introduction

This hearing was scheduled in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for an Order of Possession, for an early end to the tenancy, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 30, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch was sent to the rental unit, via registered mail. The Landlords submitted a Canada Post receipt that corroborates this statement. The Landlord stated that these documents were returned to the Landlords by Canada Post, as they were unclaimed.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed that he would not record any portion of these proceedings.

Preliminary Matter

At the hearing the Landlord who attended the hearing stated that the company named on the Application for Dispute Resolution is not the Landlord of the unit. As such, the Application for Dispute Resolution was amended to remove the name of the company from the Application for Dispute Resolution

Issue(s) to be Decided

Should this tenancy end early and, if so, should the Landlords be granted an Order of Possession?

Background and Evidence

The Landlord stated that the Landlords wish to end the tenancy early because:

- On December 15, 2021 a male, who is the Tenant's former boyfriend, smashed the front door of the residential complex and went to the Tenant's rental unit, although the Tenant was not home;
- The male was removed from the residential complex by the police on December 15, 2021;
- On March 20, 2022 the same male, who previously lived in the rental unit with the Tenant, was inside the residential complex creating a disturbance by yelling and declaring that he was the Tenant's boyfriend;
- The Tenant was not at home at the time of this disturbance;
- The male was removed from the residential complex by the police on March 20, 2022;
- On March 23, 2022 the same male returned to the residential complex and was again creating a disturbance by yelling and declaring that he was looking for the Tenant; and
- The Tenant was either not at home or was not answering her door at the time of the third disturbance.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and it permits a landlord to apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

On the basis of the undisputed evidence, I find that a male who formerly resided in the rental unit with the Tenant created a disturbance in the residential complex on December 15, 2021, March 20, 2022, and March 23, 2020. On the basis of the evidence before me, I find that the Tenant was either not at home while these disturbances were occurring or she was not answering her door.

As the Tenant was either not at home during the disturbances or she was not answering the door, I find there is insufficient reason to conclude that the male was the Tenant's guest when those disturbances occurred. On the basis of the nature of the

disturbances, I find it reasonable to conclude that the Tenant had not invited the male into the residential complex on those dates.

A landlord may end a tenancy pursuant to section 56 of the *Act* when a person permitted on the residential property by a tenant creates a disturbance. As there is no evidence that the Tenant permitted this male to be on the property when these disturbances occurred, I cannot conclude that the Landlord has the right to end the tenancy on the basis of these disturbances.

As the Landlords have failed to establish grounds to end this tenancy pursuant to section 56 of the *Act*, I dismiss the application to end the tenancy early and the application for an Order of Possession.

In reaching this conclusion I have placed no weight on the submission that the male was previously permitted on the property by the Tenant. In my view, the legislation contemplates that the person creating the disturbance was permitted on the property by the Tenant at the time of the disturbance. To conclude otherwise, in my view, would give a former intimate partner or friend an inordinate amount of power over the tenancy.

As the Landlords have failed to establish the merit of the Application for Dispute Resolution, the application to recover the filing fee is dismissed.

Conclusion

The 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 02, 2022

Residential Tenancy Branch