



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied on May 6, 2022 for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act and to recover the cost of the filing fee.

The landlord was provided the Application for Dispute Resolution and Notice of Hearing (application package) to serve the tenants on May 16, 2022.

The parties listed on the style of cause page of this Decision attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Service of application –

The landlord, through their son/agent who provided the testimony for the landlord, submitted that he served the tenants with the application package on or about May 16, 2022, by personal service. During the hearing, it was determined that CJT was served with the application package, as well as another son of the tenant. However, the other listed tenant, KJK, was the son of CJT, and the tenant presented the KJK was out of the country. The other son, who was present at the hearing, TK, was unknown to the landlord, they did not know TK lived in the rental unit, and they believed KJK was being served, according to the landlord. I therefore determined that tenant KJK was not served with the landlord's application package. The hearing proceeded against tenant CJT, as I find insufficient evidence that tenant KJK was served with the landlord's application.

Service of evidence –

The landlord filed video evidence into the RTB online service portal which was therefore before me for consideration. However, the landlord confirmed they did not serve the tenants with their video evidence. The landlord confirmed that he had not sent his audio and video (digital) evidence to the tenant.

As it was undisputed that the landlord failed to serve the tenant his evidence with his application for dispute resolution, as required by Rule 10.2, the section dealing with expedited hearings, I therefore excluded the landlord's evidence from consideration.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence that this tenancy should end early, and an Order of Possession be granted to the landlord?

Is the landlord entitled to recovery of the cost of the filing fee?

Background and Evidence

A written tenancy agreement was filed in evidence showing the tenancy began on August 15, 2019, for a monthly rent of \$1,500. The landlord submitted that the tenancy actually began in 2017. The rental unit is in the upper level of a home.

In support of their application, the landlord wrote in their application the following:

The Tenant Son has attempted multiple times to physically assault us during service repair calls, when collecting rent or to gain access for repairs to be done. Police have been called multiple time in order to diffuse or to ensure safety of everyone involved. There is some concern that the tenant's children may cause damage to the unit, as the tenant's daughter maliciously damaged Unit B when vacating the unit previously in march 2022. All communication are exhausted & safety is concerning.

The landlord submitted that communication has broken down between the landlord and tenants.

The landlord submitted that on March 22, 2022, the tenant's son threatened a service technician who attended the rental unit to make repairs. The landlord submitted that the police were called due to the incident. Afterwards, according to the landlord, they did not believe this tenancy could continue due to the threats and feelings of being unsafe when going to the residential property.

The landlord submitted that the tenant CJT made continuing promises to move out of the rental unit and never did, despite several extensions by the landlord.

The landlord submitted that they could not ignore the threats made to the technician and subsequently served the tenants with a One Month Notice to End Tenancy for Cause (Notice).

Tenant's response –

The tenant, through their son, TK, submitted that on the day the technician came to the rental unit, the technician and landlord attended to repair the refrigerator, asking if the

door could be left open as the rental unit was hot. TK said he was in his bedroom, came out, and agreed the door could be left open. Afterwards, according to TK, he closed the door as he was getting cold, at which time the technician began giving him “attitude”.

TK submitted that the police came to the rental unit, talked to all parties and then left, with no charges having been filed.

Advocate DK –

DK submitted that there were no reports of assaults being made and that the technician instigated the arguments on the day in question.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The onus to prove their case is on the person making the claim, in this case, the landlord. The standard of proof is on a balance of probabilities.

Section 56 (2) of the Act indicates that:

The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

- (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.

(b) 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 [*landlord's notice: cause*] to take effect.

In this case, I find the landlord submitted insufficient evidence to support their application.

As I have noted, I excluded the landlord's video, as he failed to serve that evidence on the tenant, as required. While that evidence may have been relevant to the proceedings, I declined to review that evidence for the hearing.

The landlord submitted that the circumstances here involve events around an alleged incident involving a repair technician attending the rental unit on March 22, 2022. While the evidence shows the police were called that day, it was disputed that the police took action or that anyone was at fault. No police reports were filed in evidence.

While the tenant or tenant's son may have very well committed the acts as indicated by the landlord, I do not find they submitted sufficient evidence to support their claim. In response, the landlord apparently served the tenant with a 1 Month Notice, which as indicated in the hearing is the subject of a dispute resolution proceeding set in August 2022.

Rather than file an application for dispute resolution for an immediate end to the tenancy at that time, March 22, 2022, the landlord waited until May 6, 2022, to begin the application process with the RTB.

Additionally, the landlord submitted that the tenants failed to move out as they agreed upon, which apparently was another reason for this application seeking an immediate end to the tenancy.

For these reasons, I find the landlord provided insufficient evidence of imminent danger to the health, safety, or security of a landlord or another tenant or occupant which prompted this application. As a result, I find the landlord has provided insufficient evidence of proving the second part of the test, that 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 [*landlord's notice: cause*] to take effect.

Overall, I find the purpose of this application was to circumvent the process regarding the enforcement of a 1 Month Notice.

Therefore, I **dismiss** the landlord's application due to insufficient evidence, without leave to reapply.

The tenancy shall continue until otherwise ended in accordance with the Act.

In addition, all parties at the hearing were misunderstanding that this application was unrelated to the tenant's application disputing the 1 Month Notice. They believed the issues in that application for dispute resolution were brought forward to this hearing. The parties were informed that the hearing on the tenant's application would proceed as scheduled, especially in light of the fact that I have dismissed the landlord's application.

The parties are further advised that the Decision I made on the landlord's application did not take into account or consider the merits of the landlord's 1 Month Notice. The parties are further advised that as the tenant's application is separate and apart from this application, no evidence transfers to that file. If parties want evidence to be considered for the next hearing, it must be submitted in advance of the hearing to the RTB and the other party. The parties should be aware of the evidence deadlines.

Conclusion

The landlord's application fails due to insufficient evidence and is dismissed without leave to reapply as a result.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 01, 2022

Residential Tenancy Branch