



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the applicant filed on May 31, 2022 for:

- an order to end a tenancy early, pursuant to section 56 of the Act; and
- the filing fee.

The hearing teleconference was attended by the applicant's counsel and by the applicant's son-in-law (CF); the respondent did not attend the hearing. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were affirmed and made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Counsel testified they served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the respondent by attaching a copy to the door on June 1, 2022, and submitted a witnessed proof of service form. Counsel testified the respondent was in jail, but has been to the rental unit several times since the NDRP was posted to the door. Counsel testified they knew the respondent had been to the unit as the police arrested the respondent, because going to the rental unit was a breach of the respondent's bail terms. Counsel testified they have also texted the respondent about the hearing, emailed the documents to the three email addresses the applicant has for the respondent, emailed the respondent's parents, and emailed the respondent's lawyer to say that the hearing was occurring.

I find the applicant served the NDRP and evidence on the respondent in accordance with section 88 of the Act, and deem the documents received by the respondent on

June 4, 2022, three days after being attached to the door, in accordance with section 90 of the Act.

Preliminary Matter

In the application, the applicant's name was listed as the LLP, which counsel advised was an error. On the cover page of this decision and in the order, I have named the applicant by their legal name, confirmed by the applicant's counsel and found on the March 12, 2022 mutual agreement to end the tenancy signed by the applicant and the respondent, and submitted as evidence. This amendment is in accordance with section 64(3)(c) of the Act.

Issues to be Decided

- 1) Is the applicant entitled to an early end of tenancy and an order of possession?
- 2) Is the applicant entitled to the filing fee?

Background and Evidence

Counsel provided the following particulars regarding the tenancy. It began on January 1, 2021; rent is \$2,750.00, due on the first of the month; and the applicant holds a security deposit of \$2,750.00.

Counsel testified that the rental property is next door to the applicant's home

The respondent is not named on the November 1, 2016 tenancy agreement submitted as evidence. CF testified that the house would be rented to a group of students, and one "lead tenant" identified. CF testified that the applicant's rental agent advised that the respondent entered into a tenancy agreement with the applicant on January 1, 2021 and electronic transfers to pay the monthly rent were coming from the respondent's bank account.

Counsel testified that the parties signed a mutual agreement to end the tenancy on June 15, 2022, which included the repayment of rent to the respondent, and that there is now a contractor working in the rental unit.

Counsel testified they are seeking an order of possession as the respondent had not voluntarily vacated the rental unit before being jailed. CF testified that the respondent

was the only one residing in the rental unit, and that the other person had moved out in March 2022.

CF testified that in December 2021 they did a walkthrough of the property, finding it full of garbage, in disrepair, containing drugs, and in need of a substantial renovation. CF testified that in March 2022 they told the respondent he must leave as they would be doing a major renovation.

CF testified that the respondent then became erratic: leaving CF voicemails at all hours, contacting CF's family via social media, and asking for millions of dollars in exchange for vacating the rental unit.

Counsel provided a written submission, dated May 30, 2022, which includes the following:

- The landlord is 84, lives alone, and there are few close neighbours to the side-by-side properties.
- The tenant suffers from various mental health conditions, and appears to have decompensated to the point where the landlord is worried for her safety.
- Over the past few weeks, the tenant has been entering the landlord's yard and leaving items behind.
- One May 27, 2022, the tenant entered the landlord's property and:
 - ripped off a gate separating the two properties, with enough force to break the fence post;
 - smashed the window of a greenhouse;
 - carrying a stick, threw various items into the landlord's pool, then attempted to enter the landlord's home by trying the doors; and
 - seeing the landlord and someone else inside, the tenant yelled at them.
- as a result of the tenant's violence and escalating behaviour, the landlord is seeking an emergent end to the tenancy under section 56 of the Act, specifically subsections (2)(a)(i), (ii), (iii) and (iv).

Counsel testified that the respondent was arrested and charged with criminal harassment of the applicant and released on bail, on condition that he would not contact the applicant or CF, or return to the property unaccompanied by police. However, the respondent has contacted the respondent and visited the rental property, resulting in his re-arrest. CF testified the respondent had been entering the rental property through a window in the roof, and police have instructed the applicant to secure the rental property for the applicant's safety.

CF testified the applicant has recently spent \$10,000.00 on security, including employing an overnight security guard, and is very frightened.

Counsel referred to future dispute proceedings between the parties, as noted on the cover page of this decision.

Analysis

Although there is no written tenancy agreement in evidence with the respondent listed as a tenant, I accept the undisputed testimony that the respondent and applicant entered into a tenancy on January 1, 2021.

Section 56 of the Act establishes the grounds whereby a landlord may make an application for dispute resolution to request (1) an early end to tenancy, and (2) 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 of the Act for a landlord's notice for cause.

When seeking to end a tenancy early and obtain an order of possession under section 56, a landlord has the burden of proving, for example, that a 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;
- seriously jeopardized the health or safety or a lawful right or interest 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,
 - 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
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord, **and**
- it would be unreasonable or unfair to the landlord or other occupants to wait for a One Month Notice to End Tenancy for Cause under section 47 of the Act to take effect.

The landlord's representatives have provided affirmed undisputed testimony that the tenant has damaged the landlord's property, sought to enter the landlord's home

uninvited, yelled at the landlord, has been charged with criminally harassing the landlord, and has violated bail terms by contacting the landlord and visiting the rental property unaccompanied by police.

Based on the evidence before me, and on a balance of probabilities, I find that in accordance with section 56 of the Act, the tenant has significantly interfered with or unreasonably disturbed the landlord of the residential property. And, I find it would be unreasonable and unfair to the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the Act to take effect.

Therefore, I find the landlord is entitled to an early end of tenancy and an order of possession.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72, I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction.

Conclusion

The landlord's application is granted.

The landlord is granted an immediate order of possession.

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: June 23, 2022

Residential Tenancy Branch