



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, ET**

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on May 10, 2022 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlords and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above-mentioned document were sufficiently served pursuant to Section 71 of the *Act*.

Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on October 13, 2020. The Landlords stated that the Tenant is required to pay rent in the amount of \$1,770.00, while the Tenant was under the impression that rent in the amount of \$1,796.55 is due to the Landlords. Regardless, the parties confirmed that the Tenant paid a security deposit in the amount

of \$885.00 and a pet damage deposit in the amount of \$442.50. The Tenant continues to occupy the rental unit.

The Landlords stated that they are seeking an early end to the tenancy in relation to an incident which took place on January 9, 2022. The Landlords stated that they attended the rental unit to conduct their quarterly inspection of the rental unit. During the inspection, the Landlord F.J. stated that when she entered the bedroom, the Tenant grabbed her arm firmly and pushed her to the bed. The Landlord R.J. stated that he heard F.J. screaming and responded to the bedroom to witness the event. The Landlords stated that they continued with their inspection before leaving. The Landlords stated that they are fearful to return to the rental unit as a result of the incident, and are now uncertainly if the Tenant is damaging the rental property as they are unable to attend to verify.

The Tenant stated that the Landlords had attended the rental unit on January 2, 2022 to conduct their inspection, however, had not provided adequate notice prior to entry. The Tenant stated that he had called Police to attend. The Tenant stated that the Landlord later returned on January 9, 2022 to conduct their inspection. The Tenant stated that he notified the Landlords that his wife was sleeping in the bedroom and requested that they not enter the bedroom to maintain her privacy. The Tenant stated that the Landlords entered regardless, which prompted him to pull on the F.J.'s coat in an attempt to redirect her from the bedroom. The Tenant denies being forceful and denies having pushed the F.J. into the bed.

The Landlords stated that they have since served the Tenant with a One Month Notice to End Tenancy at the time of serving the Notice of Hearing. If successful, the Landlords are seeking the return of the filing fee.

Analysis

Based on the documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy 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*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

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...

- (a) The tenant or a person permitted on the residential property by the tenant had 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 landlords 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,*
and
- (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.***

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. I accept that an incident took place between the Landlords and the Tenant on January 9, 2022. I find that the Landlords provided insufficient evidence to demonstrate that the incident poses immediate and severe risk. This can be further confirmed by the fact that the Landlords waited four months after the incident to seek an early end to the tenancy. During the hearing, the Landlords stated that they have served a One Month Notice to End Tenancy to the Tenant near the end of May 2022.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act.

In light of the above, I dismiss the Landlords' Application, without leave to reapply. As the Landlords were not successful with their Application, the Landlords are not entitled to recover the filing fee from the Tenant.

Conclusion

The Landlords have issued a one month notice to end tenancy for cause; however, they had insufficient evidence to prove it should end earlier under section 56. The tenancy will continue until ended in accordance with the Act.

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 13, 2022

Residential Tenancy Branch