



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution, seeking remedy under the *Residential Tenancy Act* (the Act) for an order to end the tenancy early and to receive an order of possession, due to health or safety issues, and to recover the cost of the filing fee.

The landlord, the daughter of the landlord, JD (daughter) and the spouse of the landlord, SD (spouse) attended the teleconference hearing. The landlord, daughter and spouse were provided the opportunity to provide affirmed testimony and were provided the opportunity to present evidence submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and makes submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated May 31, 2022 (Notice of Hearing) and the application were considered. The daughter provided affirmed testimony that the Notice of Hearing and application were served on the tenants personally at the rental unit at 6:25 p.m. on June 3, 2022. The daughter also confirmed that the one video submitted in evidence was not served on the tenants, and is excluded in full as a result as it was not served as required on the other party.

Preliminary and Procedural Matter

The daughter confirmed the landlord's email address and stated that they do not know an email address of the tenants. The daughter confirmed the tenants continue to reside in the rental unit.

Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession for health or safety purposes under the Act?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted. A month-to-month tenancy began on January 1, 2022.

The landlord is seeking an early end of the tenancy for the following reason:

After the 10 day notice was served, tenant began approaching landlords children after consuming alcohol, began smoking in the suite.

[reproduced as written]

The daughter began to speak of a 10 Day Notice, which is not relevant to the this hearing based on section 56 of the Act, ending a tenancy early due to health or safety reasons. The tenant was informed that if the tenant did not dispute a 10 Day Notice, they could apply to end the tenancy for that purpose with a separate application but that it is not relevant to the matter before me.

The daughter was asked to confirm with her father if the tenants ever physically assaulted the landlord or a family member of the landlord and the answer was “no”.

The daughter spoke of yelling in the rental unit but had not digital evidence to support this testimony. Furthermore, the daughter and landlord were advised that I would not be ending the tenancy for a smoking allegation, as that would be related to a 1 Month Notice to End Tenancy for Cause (1 Month Notice) and not an ET application (early end of tenancy application for health or safety reasons).

The daughter kept referring to video evidence, and I reminded the daughter that I would not be reviewing a video that was not properly served on the other party.

As there were no allegations of physical violence or threats to the health or safety of the landlord or their family presented, this application was dismissed during the hearing, due to insufficient evidence.

Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the Act indicates:

56(1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) 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, **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.

[emphasis added]

The burden of proof is on the landlord to prove that it would be **unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect**. The landlord did not provide evidence that a 1 Month Notice to End Tenancy for Cause (1 Month Notice) has been served on the tenant and none of the allegations meet the high test under section 56 of the Act to end a tenancy early for health or safety reasons.

If the landlord has an undisputed 10 Day Notice, they can apply for an order of possession and unpaid rent through the normal dispute resolution process, but I find neither of those scenarios support ending this tenancy pursuant to section 56 of the Act.

As a result of the above, I find that the landlord has failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the Act. The landlord may wish to serve a 1 Month Notice or a 10 Day Notice under the Act as a result. Consequently, **I dismiss** the landlords' application due to insufficient evidence.

The filing fee is not granted as this application has been dismissed.

Conclusion

The landlord's application fails and is dismissed due to insufficient evidence.

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

This decision will be emailed to the landlord and sent by regular mail to the tenants.

The filing fee is not granted as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 14, 2022

Residential Tenancy Branch