



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an early end to the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Neither tenant attended this hearing, although I left the teleconference hearing connection open until 10:04 am in order to enable the tenants to call into the hearing scheduled to start at 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord and I were the only ones who had called into the hearing.

The landlord personally served tenant JL with the notice of dispute resolution proceeding package and some of his supporting evidence on June 30, 2022. He submitted a proof of service form confirming this.

The landlord served tenant DK with the notice of dispute resolution proceeding package by posting it in the mailbox of the rental unit on June 30, 2022. He submitted a proof of service form confirming this as well.

I am satisfied that the tenants have been served with the required documents in accordance with the Act.

Neither tenant provided any documentary evidence in response to the application.

The landlord provided additional pieces of documentary evidence to the Residential Tenancy Branch (the "**RTB**") on July 5, 2022. These documents came into existence after the previous documentary evidence package was served. The landlord testified that he did not serve these documents on the tenants. As such, I exclude these documents from evidence.

Issues to be Decided

Is the landlord entitled to:

- 1) end the tenancy early pursuant to section 56 of the Act;
- 2) recover the filing fee;

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting May 1, 2022. Monthly rent was \$1,200 and is payable on the first of each month. The tenancy agreed stated "(both pay \$600 =\$1,200 total)". The tenants each paid the landlord a security deposit of \$300 (\$600 total), which the landlord continues to hold in trust for the tenants.

The residential property is a single detached house divided into three separate suites. The tenants occupy one of the suites on the lower floor. The landlord occupies the other suite on the lower floor. The upper floor suite is occupied by other tenants who are not parties to this application.

On May 23, 2022, tenant DK gave written notice of her intention to end the tenancy effective June 30, 2022. The landlord testified that she vacated the rental unit on June 12, 2022. The landlord testified that DK told him the reason she was leaving was due to tenant JL's conduct. He testified that she did not provide specifics beyond that he refused to flush the toilet after using it and that he threw garbage all over the driveway and refused to pick it up.

The landlord testified that within a few days of the tenancy starting, JL began throwing carrots into the garbage. The landlord told JL that food waste should go on the green waste bin, and that JL denied putting carrots in the garbage. The landlord spoke with the other occupants of the residential property, all of whom denied placing carrots in the garbage. The landlord testified that shortly thereafter JL threw garbage on the driveway and refused to clean it up on multiple occasions. He submitted photos of a significant amount of garbage piled up in the driveway.

JL did not pay any rent in June. DK paid \$600. The landlord served each of them with a 10 day notice to end tenancy. JL disputed this notice, and the matter is set to come to a hearing in October 2022. The landlord stated that that JL sent him "taunting" text messages about this.

The landlord testified that JL smokes marijuana in the rental unit "24/7". He admits that there is no term in the tenancy agreement which prohibits smoking in the rental unit.

However, he testified that the odor frequently disturbs him. Additionally, he testified that JL left approximately two ounces of marijuana out on his bed as well as a note urging people not to rent from the landlord when the landlord showed the rental unit to a prospective renter.

The landlord testified that JL routinely leaves all of the lights in the rental unit on and runs the bathroom and stove exhaust fan all day. He speculates JL does this to disturb the landlord. JL also turns an exterior halogen light next to a window of the upper unit on at all hours of the day. This disturbs the occupants of the upper unit. The upper unit also house controls over this light, and the landlord testified that the upper tenants and JL have gotten into a “war” over control of this light.

The two lower suites share laundry facilities. These facilities are located right outside the landlord’s unit. The landlord testified that JL does laundry most days of the week, and often leaves his laundry in the machines for days at a time. He testified that JL often does laundry in the middle of the night. The landlord submitted three videos showing the laundry machine running between midnight and two in the morning. JL is in these videos as well, and the landlord tells him to stop doing his laundry this late as it is disturbing him. The landlord testified that these videos were all taken in a single night, but JL’s use of the laundry facilities was not limited to that night only. He testified that this was a regular occurrence. The landlord testified that in early July, 2022, JL cut the power cord on the washing machine and broke an exterior gate in the garden.

Finally, the landlord testified that JL opened all the windows in the rental unit, turned on every faucet, and then left the rental unit. The landlord testified that this “scared the hell out of [him]” and he was not sure if the rental unit was going to flood. The landlord did not enter the rental unit to turn the faucets off, as he was not sure if he had the legal authority to do this. JL returned an hour and a half later and turned the faucets off. No flooding occurred.

The landlord testified that, during the hearing, a U-Haul truck had pulled into the residential property’s driveway. The landlord stated that he was not sure if this meant JL was vacating the rental unit. In any event, the landlord stated that he wanted to continue with the hearing.

Analysis

Section 56 of the Act sets out the criteria that must be met for a landlord’s early end to tenancy application:

Application for order ending tenancy early

56(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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord must prove it is more likely than not that the tenant's conduct meets the criteria set out at section 56(2) of the Act.

I accept the undisputed testimony of the landlord in its entirety. Based on his testimony, supported by the photographs and videos admitted into evidence, I find that JL unreasonably disturbed the landlord and the other occupants of residential property on multiple occasions. In particular I find the following conduct represents unreasonable disturbances:

- Repeatedly turning the exterior halogen floodlight on so that light pours into the upper unit;
- Leaving garbage on the driveway of the residential property; and
- Running the washing machine in the middle of the night repeatedly, in particular after the landlord has specifically stated that this is disturbing him.

I do not find that any of the aforementioned conduct is reasonable, and I find that such conduct undoubtedly disturbs the other occupants of the residential property to an unacceptable level.

As such, I find that the requirement of section 56(2)(a) of the Act is satisfied.

In light of the ongoing nature of these disturbances, and the fact that they seem deliberately designed to aggravate the other occupants of the residential property, I do not find that it would be fair to the occupants of the residential property to make them wait for the landlord to end the tenancy by way of section 47 of the Act. I find that the requirement of section 56(2)(b) of the Act is satisfied.

Accordingly, I find that the landlord has been successful in the application. I issue landlord in order of possession effective two days after it is served on the tenants.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of this amount.

Conclusion

Pursuant to section 56 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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: July 15, 2022

Residential Tenancy Branch