



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An early end to the tenancy and order of possession pursuant to s. 56; and
- Return of his filing fee pursuant to s. 72.

J.F. appeared as the Landlord. T.B. appeared as counsel for the Landlord. H.P. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that they served the Tenant with the Notice of Dispute Resolution and their evidence. The Tenant acknowledges receipt of the Landlord’s application materials. I find that the Landlord has served his application materials in accordance with s. 89 of the *Act*.

The Tenant confirmed that he did not serve evidence in response to the Landlord’s application.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession without issuing a notice to end tenancy?
- 2) Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant began to occupy the rental unit on October 31, 2019.
- Rent of \$1,500.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$750.00 and a pet damage deposit of \$750.00 in trust for the Landlord.

I was advised by the parties that another tenant lives at the residential property.

Landlord's counsel advised that the Tenant or people permitted onto the property by the Tenant have consumed illicit substances. I was directed to a text message from the Tenant dated February 1, 2022 that was included in the Landlord's evidence. That text message outlines that one individual was found to be "injecting in the bathroom" and that a firearm was stolen. The Tenant's text message outlines that he called the police.

The Landlord testified that one of the individuals from the incident in late January or early February 2022 broke into a neighbour's truck. The Landlord indicates that when he spoke with a neighbour he was told that the Tenant told the neighbour that he is selling drugs from the rental unit.

The Tenant testified to taking in two individuals from a homeless shelter for a brief period while they transitioned to other housing. The Tenant indicated that he was not involved in their actions and that he was a victim of crime. The Tenant denies drug use.

The Landlord further testified to garbage on the property, including the construction of a shed out of pallet wood. The Landlord indicates that he has had to attend the property on occasion to clean up the Tenant's garbage, including an instance in which four truck loads of garbage were taken off the property. The Landlord's evidence includes photographs of the residential property.

The Tenant indicates that he was in a car accident in December 2021, which impacted his ability to take out his garbage. Though he denies leaving excess garbage around the property.

Landlord's counsel advised that the Landlord has issued both a One-Month Notice and a 10-Day Notice and indicated that the Tenant owed \$10,700.00 in arrears in rent.

Analysis

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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,
 - 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
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between ss. 47 and 56 is that under s. 56(2)(b) a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline #51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

The Landlord alleges that persons permitted on the property by the Tenant consumed illicit substances and caused a disturbance in late January or early February 2022. Firstly, mere consumption of illegal substances is not sufficiently serious on its own to warrant ending a tenancy without notice under s. 56. Secondly, the perpetrators in question no longer reside at the property such that there is no likelihood that the incidents will reoccur. These may constitute grounds for ending a tenancy under s. 47.

However, it is not clear to me why it would be unreasonable or unfair to the Landlord or the other occupant to wait for a One-Month Notice to take effect.

Further, I have reviewed the Landlord's photographs. Again, the garbage may constitute grounds for ending a tenancy under s. 47 but does not clearly pose imminent risk to the Landlord's property such that it would be unreasonable or unfair to wait for a One-Month Notice to take effect. Finally, s. 56 of the *Act* is clear that it only pertains to the rights of landlords and occupants at residential property. It does not extend to illegal activity that takes place away from the residential property, such as breaking into a vehicle on the neighbouring property.

Under the circumstances, I find that the Landlord has failed to establish that the grounds exist to end the tenancy under s. 56.

As a final note, the Landlord and his counsel drew my attention to a 10-Day Notice and One-Month Notice in their evidence. Rule 2.2 of the Rules of Procedure is clear that the claim is limited to what is stated in the application. The Landlord has claimed an order of possession under s. 56, not an order of possession under s. 55 after issuing notice to end tenancy. The Landlord has not filed an application claiming an order for unpaid rent. I make no comment or findings on the issues surrounding the One-Month Notice, the 10-Day Notice, or unpaid rent. The Landlord is free to file an application in which relief on those issues is properly claimed.

Conclusion

The Landlord's application for an order of possession under s. 56 is dismissed without leave to reapply.

The Landlord was unsuccessful in its application. I find he is not entitled to the return of his filing fee. His application under s. 72 is dismissed without leave to reapply.

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: August 25, 2022

Residential Tenancy Branch