



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 pursuant to the *Residential Tenancy Act* ("the *Act*") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing, and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

At the outset of the hearing, the tenant NA confirmed their legal name, which differed from the name provided by the landlord. As neither party was opposed, NA's name was amended to reflect their legal name.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the tenants duly served with the landlord's application. As the landlord confirmed receipt of the tenants' evidentiary materials, I find the landlord duly served with the tenants' evidence.

Preliminary Issue – Service of the Landlord's Evidence

The tenants testified that they did not receive any written or electronic evidence from the landlord. The landlord submitted to the RTB two videos, as well as thirteen documents labelled "text messages and cancelled e-transfer for rent- Cancelled e-transfers for April and may". The tenants testified that they did not receive any of these materials from the landlord.

Rule 10.2 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that an applicant must submit all evidence that the applicant intends to rely on at the expedited hearing with the Application for Dispute Resolution.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing.

As I am not satisfied that the tenants were served with the landlord's evidence in accordance with section 88 of the *Act* and Rules 10.2 and 3.14 as set out above, I exercise my discretion to exclude the landlord's evidence for the purposes of this expedited hearing. I allowed the landlord to give oral evidence. Both parties confirmed that they wished to proceed with the scheduled hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on June 1, 2019, with monthly rent currently set at \$1,250.00, payable on the first of the month. The landlord still holds a security deposit of \$650.00.

The landlord testified that they did not have a problem with the main tenant, SA for three years. The landlord testified that after NA and their daughter moved in, the tenants started complaining about the noise from the suite above, and kept turning on the exhaust fans, which the landlord found to be extremely loud. The landlord also testified that the tenants prevented the landlord from accessing the garage. The landlord testified that due to the complaints, the landlord is now unable to use the home and perform regular functions such as showering later in the evening in case the noise bothers the tenants. The landlord is also worried about inviting guests over. The landlord testified that the tenants call the police on a regular basis, and as a widow, the landlord feels harassed by the tenants.

The tenants deny any harassment, and testified that they have not blocked the garage. The tenants confirmed that there are ongoing disputes between the parties, including issues with noise due to the lack of insulation between the suites, but these issues do not justify the early end of this tenancy under section 56 of the *Act*. The tenants testified that they had to raise several issues, including lack of heating, which is controlled by the landlord.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of 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. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, I need to be satisfied that the tenants have done any of the following:

- *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 interests 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;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, and*

it would be unreasonable, or unfair to the landlord, the tenant 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.

For the purposes of an application under section 56 of the *Act*, the question is whether the landlord has met the test to demonstrate that not only would they qualify for an Order of Possession under section 55 of the *Act*, but that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. The landlord testified that the main issue for this urgent application is due to the ongoing harassment from the tenants. The landlord, in their application, is

attempting to obtain an early end to tenancy as they believe the tenants have acted in a manner that justifies an Order of Possession pursuant to section 56 of the *Act*.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

As stated above, the landlord's failure to pursue an Order of Possession pursuant to a 1 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. I find that the landlord failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. Although the landlord may have significant concerns about the behaviour of the tenants, I do not find that that the landlord has met the criteria for obtaining an Order of Possession under section 56 of the *Act*. I am not satisfied that the landlord has provided sufficient evidence to support that that the landlord or their property is at significant risk if the landlord had to wait for the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice. I am not satisfied that the landlord had established the reason for the urgency behind this application that would allow the landlord to circumvent the standard process of obtaining an Order of Possession under section 55 of the *Act*. For these reasons, I dismiss the landlord's application for an early end to this tenancy without leave to reapply.

As the landlord was not unsuccessful in this application, I dismiss the landlord's application to recover the filing fee from the tenants without leave to reapply.

Conclusion

I dismiss the landlord's application in its entirety without leave to reapply. This tenancy continues 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: September 6, 2022