



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KERR PROPERTIES 002 LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on August 19, 2022 (the "Application"). The Landlord 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 hearing was scheduled for 9:30 A.M. on October 4, 2022 as a teleconference hearing. J.G. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 13 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that J.G. and I were the only persons who had called into this teleconference.

J.G. testified the Application and documentary evidence package was served to the Tenant by Canada Post Registered Mail on September 8, 2022. The Landlord provided a copy of the Registered Mail receipt in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence five days later, on September 13, 2022. The Tenant did not submit documentary evidence in response to the Application.

Issue(s) to be Decided

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

Background and Evidence

J.G. testified that the tenancy began on March 1, 2019. Currently, the Tenant pays rent in the amount of \$925.00 which is due to the Landlord on the first day of each month. J.G. stated that the Tenant did not pay a security deposit and continues to occupy the rental unit.

J.G. stated that the Landlord is seeking to end the tenancy early based on an incident which took place on April 15, 2022. J.G. stated that the Tenant and his neighbour were involved in a verbal disagreement. J.G. stated that the Tenant retaliated by kicking and damaging the neighbour's gate, cut an extension cord, and painted a sign which faces the neighbour's unit which reads "Liar and Thief". J.G. stated that the Police were called. The Landlord provided pictures in support.

J.G. stated that the Tenant has also threatened their neighbour, which has caused them to be anxious and fearful. J.G. stated that the Landlord has also issued a One Month Notice to End Tenancy for Cause, however, given the neighbour's fears, the Landlord is seeking to end the tenancy sooner.

Analysis

Based on the unchallenged 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. During the hearing, J.G. indicated that the reason for seeking an order of possession was in relation to an incident which took place between the Tenant and their neighbour on April 15, 2022. While the incident is concerning and may constitute sufficient cause to end the tenancy based on the One Month Notice, 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 passage of time between the incident which took place on April 15, 2022 and the Landlord's Application for an early termination to the tenancy over four months later on August 19, 2022 takes away from the immediate and sever risk nature of the Application. 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 Landlord's Application, without leave to reapply. As the Landlord was not successful with their Application, the Landlord is not entitled to recover the filing fee from the Tenant.

Conclusion

The Landlord has 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: October 04, 2022

Residential Tenancy Branch