



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMMERFIELD RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord October 11, 2022 (the "Application"). The Landlord applied for an order ending the tenancy early pursuant to section 56 of the *Residential Tenancy Act* (the "Act"). The Landlord also sought reimbursement for the filing fee.

J.B. and W.B. (the "Agents") appeared at the hearing for the Landlord. The Tenant did not appear at the hearing. I explained the hearing process to the Agents. I told the Agents they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agents provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

J.B. testified that the hearing package and Landlord's evidence were posted on the door of the rental unit October 27, 2022. The Landlord submitted a Proof of Service form signed by the Agents confirming service.

Based on the undisputed testimony of J.B. and Proof of Service, I accept the Tenant was served with the hearing package and Landlord's evidence October 27, 2022, in accordance with sections 88(g) and 89(2)(d) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the hearing package and evidence October 30, 2022. I find the Landlord complied with rule 10.3 of the Rules in relation to the timing of service.

In relation to the Landlord's evidence, the Landlord submitted unredacted evidence to the RTB but only provided redacted evidence to the Tenant. The Landlord cannot submit different evidence to the RTB than that served on the Tenant because it is unfair to the Tenant for me to consider evidence the Tenant has not seen and cannot fully reply to. I acknowledge that the Landlord sent redacted copies of the evidence to the Tenant due to safety concerns; however, these are legal proceedings that could result in the tenancy ending and the Tenant is entitled to see who has made complaints against them, if the Landlord is relying on those complaints, so that the Tenant can fully respond to the complaints. If the Landlord insists on redacting information from the evidence, then the Landlord must only provide the redacted evidence to the RTB. Given the Landlord provided unredacted evidence to the RTB but only redacted evidence to the Tenant, I have excluded the unredacted evidence pursuant to rule 3.17 of the Rules because I find it was not served on the Tenant as required by the Rules and it would be unfair for me to consider the evidence.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered the redacted evidence because J.B. confirmed the Tenant received the same evidence as the RTB in relation to these documents. I have also considered the testimony of J.B. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted the written tenancy agreement between the parties which started August 01, 2021. The Tenant paid an \$800.00 security deposit.

J.B. sought to keep \$100.00 of the security deposit towards the filing fee.

J.B. testified as follows. Over the past three months, the Tenant has threatened other tenants with physical violence more than once. On one occasion, the Tenant had a

knife and threatened another tenant of the building with the knife in their hand. Three tenants have moved out of the building due to being intimidated and scared of the Tenant. The Tenant has had a fire on their deck. The Tenant has been arrested by police in relation to an incident involving another tenant of the building.

The Landlord submitted the following documentary evidence:

- A redacted email stating that the Tenant had threatened to kill the author. The email states that the Tenant had a kitchen knife in their hand. The email states that the author fled the building and called police. The author states they do not feel safe.
- A redacted email about the Tenant being arrested.
- A redacted email about the Tenant using and selling drugs from the property as well as damaging vehicles in the parking area.
- A redacted email about there being a fire on the Tenant's deck due to a cigarette being discarded in a cardboard box.
- A redacted email about the Tenant's neighbour feeling uncomfortable due to the Tenant's behaviour.

J.B. sought an Order of Possession effective two days after service on the Tenant.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or

5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause issued pursuant to section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet the above two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept that the Tenant has threatened other tenants with physical violence, threatened to kill another tenant while having a knife in their hand, caused a fire on their deck and been arrested due to incidents involving other tenants. I accept that three tenants have moved out of the building due to the Tenant's behaviour. I accept these points because J.B.'s testimony and the Landlord's documentary evidence are undisputed. I accept that the Tenant has significantly interfered with and unreasonably disturbed other tenants of the residential property due to their behaviour outlined above.

I accept that it would be unreasonable and unfair to require the Landlord to issue a One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act* and wait for this to take effect because the Tenant's behaviour involves threats and violence and raises serious safety concerns for other tenants of the building.

I am satisfied the Landlord has met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit effective two days after service on the Tenant.

Given the Landlord has been successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Landlord can deduct \$100.00 from the Tenant's security deposit as reimbursement for the filing fee.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord can deduct \$100.00 from the Tenant's security deposit as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 15, 2022

Residential Tenancy Branch