



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing convened to deal with the landlords' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlords applied for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act and to recover the cost of the filing fee.

The landlords, the tenant, and the tenant's advocate attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenant confirmed receipt of the landlords' evidence and the landlords confirmed that they received the tenant's evidence just prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to end this tenancy early without the requirement of a One Month Notice to End Tenancy?

Are the landlords entitled to an Order of possession and to recover the filing fee?

Background and Evidence

The tenants moved into the rental unit in December 2019. There was no written tenancy agreement filed in evidence. The rental unit is a single family house located on 20 acres owned by the landlords, who live out of country. The other listed tenant is GM, the tenant's son.

When asked about other occupants or tenants on the residential property, the landlords said that there were two other rental units. One was described as a studio with a cottage attached and the other was described as a tiny home. The other rental units were occupied by other tenants. The cottage was separated from the rental unit by a big lawn, a driveway and up a hill. The tiny home could be moved around, according to the landlords.

The reason for the application given in the landlords' application was the following:

*Tenants (**) and (**) are mentally unstable and the other tenants (3) on the land feel threatened and in danger. (**) has been heard screaming at all hours of the day and night, breaking glass, and sitting in front of the other tenants' house dressed only in a sheet, staring at them.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The landlord testified that there was a succession of concerns from the other tenants on the residential property raised to the landlords. The concerns included screams heard from the other tenant, GM, and sounds of glass breaking. The landlords said the other tenants raised concerns about the tenants' dog; however, the dog is now rehomed.

The landlord testified that they served the tenants a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) because the other tenants felt fearful. The landlords said they had been receiving emails from the other tenants and they were fearful of retribution.

The landlord testified that the tenant in the tiny home called the police, but nothing was done after they came to the residential property.

The landlords said they just want all the residents of the residential property to have a harmonious relationship and wants it peaceful for them.

The landlords said that they had the tenants served with the 1 Month Notice on September 24, for an effective move-out date of November 1, 2022. The landlord testified that when they discovered the hearing on the tenants' application disputing the 1 Month Notice was scheduled in February, 2023, they felt they had to do something, leading to this application.

The landlords' documentary evidence included emails from the other occupants of the residential property with their concerns that had been ongoing.

In response, the tenant referred to her evidence which included letters from her and GM's doctors. The tenant said that GM was following the treatment protocols laid out by his doctor, which included breaking jars and masonry and vocalizing. The tenant said all broken glass was cleaned up afterwards and when she learned the other occupants were being disturbed, the glass breaking and vocalizing were discontinued. The tenant said that her son did wear a sheet around him during the heat wave in the summer due to the constriction of clothing, but it was in their driveway close to their home. The tenant denied that her son stares at people, but that he does have spectrum qualities. The doctor's letter described GM as suffering from a catastrophic traumatic neurologic injury, who is being treated by alternative physical hearing sessions.

The tenants said that the other tenants and their children engage her in conversation around the property, and that in particular, the two children living in the cottage have come up to chat about their kitten and mud pies, in sight of their parents who do not show concern.

Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the Act states:

56 (1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(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.**

[emphasis added]

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*Applications to end a tenancy early are for **very serious breaches only** and require sufficient supporting evidence. An example of a serious breach is **a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach**, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).*

The onus to prove their case is on the person making the claim, the landlord in this case. The standard of proof is on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 56 of the Act lays out a 2-step process. The second part of the test is that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

In this case, both landlords testified at the hearing that they filed this application in response to the hearing for the tenants regarding the 1 Month Notice served to them not being set until February 2023. I do not find this motive for filing this application was due to the allegations of other occupants, but rather to circumvent the hearing times of the RTB in order to have a quicker hearing. For this reason, I do not find this application meets the high burden of proof to support the second part of the two-part test.

I find the written submissions of the landlords were unsupported by direct testimony from the other occupants and were vague as to timelines when any alleged incidents began occurring. The submissions referred to, among other things, the tenant's dog's behaviour, but did not indicate when those issues began. Apart from that, the dog has

since been rehomed. Police were called to the property, but there were no police reports made.

The landlords mentioned caretaker duties required of the tenants, but I do not find caretaker duties, if in fact the tenant is required to perform those duties, are anything akin to meeting the high bar for ending this tenancy early.

Given the above, I therefore find that there was insufficient evidence of imminent danger to the health, safety, or security of a landlord or another tenant or occupant.

The landlords did not provide specific evidence relating to a claim that the tenant caused extraordinary damage to the residential property, and therefore, that matter was not considered.

For these reasons, I therefore find the landlord submitted insufficient evidence to meet the high bar needed to end this tenancy earlier than to wait for a one month notice to end the tenancy under section 47 of the Act.

I **dismiss** the landlord's emergency application due to insufficient evidence, without leave to reapply.

The filing fee is not granted as a result.

The tenancy shall continue until ended in accordance with the Act.

Both parties are informed that evidence filed with the RTB on any application does not transfer to any other applications. Therefore, the parties should be aware that if they have filed evidence for this dispute they wish considered for the next dispute resolution hearing, it must be filed in for that application.

Conclusion

The landlords' application fails due to insufficient evidence and is dismissed without leave to reapply as a result.

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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 29, 2022

Residential Tenancy Branch