



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order to end the tenancy early and to receive an order of possession, due to health or safety issues pursuant to section 56 of the Act.

The landlord and the tenants attended the teleconference hearing. The parties were provided the opportunity to provide affirmed testimony and were provided the opportunity to present evidence submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and makes submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

After some discussion the parties agreed that other than the 2 ".mov" files submitted by the tenant, that all documentary evidence was received by both parties and that both parties had the ability to review that evidence prior to the hearing. As the tenant confirmed that they did not serve the landlord with the 2 ".mov" files, those were excluded from the hearing pursuant to RTB Rule 3.17.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the start of the hearing and were advised that the decision would be sent to both parties by email.

Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession for health or safety purposes under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on December 1, 2019. The landlord writes in their application the following:

Tenant may be mentally unstable and is disturbing tenant living below him. We have received many complaints of his outbursts, screaming and stomping on the floor.

[reproduced as written]

The landlord testified that on October 20, 2022, they received a letter from the Strata (Warning Letter), a copy of which was submitted in evidence. The Warning Letter indicates that the Strata received a written complaint regarding an alleged bylaw violation on October 18, 2022. The landlord testified that he requested to meet with the tenant to discuss the Warning Letter and that the landlord and tenant AK met on October 22, 2022. The landlord confirmed that after the meeting the landlord wrote a response to the Strata and that the Strata did not fine or take further action against the landlord. In addition, the landlord stated that there have been no further complaints since the Warning Letter. While the landlord mentioned that they and tenant discussed a potential end to the tenancy in July of 2023, there has been no signed agreement between the parties regarding that issue.

The landlord mentioned a “bowling ball” message; however, was unable to provide the name of the document and therefore failed to present that message for my consideration. The landlord testified that they are fine with the tenant staying as long as there are no more complaints. The landlord confirmed that they have never issued the tenant a 1 Month Notice to End Tenancy for Cause (1 Month Notice).

The landlord was asked if they had any further evidence to present, which the landlord did not have. At this point in the hearing, the parties were informed that the landlord's application failed to meet the burden of proof, which I will now address below in further detail.

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 indicates:

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]

The burden of proof is on the landlord to provide sufficient evidence to meet the two-part test as follows:

Part One: Is there sufficient evidence to support that the tenant or a person permitted on the property by the tenant, has done anything listed in Section 56(2)(a)(i) to (v) listed above?

Part Two: If yes to Part One above, is there sufficient evidence to support that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a 1 Month Notice to take effect?

Given the evidence before me and that the landlord has the burden of proof, I find that the landlord has failed to meet part one of the two-part test described above. Accordingly, I find it is not necessary to consider part two of the two-part test described above.

In reaching this finding I find the details of the application is missing crucial details such as a date and time of a specific allegation and as such, it would be difficult if not impossible for the tenant to rebut an allegation without those crucial details. Secondly, as the Warning Letter did not result in a fine to the landlord and that the landlord confirmed that there have been no further complaint letters or warnings, that the landlord has failed to satisfy the burden of proof.

Consequently, I find that the landlord has failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a 1 Month Notice under section 47 of the Act. Given the above, **I dismiss** the landlord's application due to insufficient evidence.

Conclusion

The landlord's application fails and is dismissed due to insufficient evidence.

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

This decision will be emailed to the parties at the email addresses confirmed by the parties during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 24, 2022

Residential Tenancy Branch