



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 56 for early termination of the tenancy; and
- return of their filing fee pursuant to s. 72.

I.S. appeared as the Landlord. G.C. appeared as the Landlord’s agent. T.G., K.W., and J.M. appeared as witnesses for the Landlord, though only T.G. and J.M. provided evidence.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord testified that she posted the Notice of Dispute Resolution and initial evidence on the Tenant’s door on November 16, 2022. Based on the undisputed testimony of the Landlord, I find that the Notice of Dispute Resolution and the Landlord’s initial evidence was served in accordance with s. 89(2) of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Notice of Dispute Resolution and initial evidence on November 19, 2022.

The Tenant did not attend the hearing, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

Preliminary Issue – Additional Evidence for the Landlord

The Landlord provided a video file to the Residential Tenancy Branch and three documents on November 28, 2022 in support of their application.

The Landlord testified that the video was not served with the documents on the door but were instead sent to the Tenant's email address. I enquired whether the parties had agreed that email was an approved form of service, as contemplated under s. 43 of the Regulations. The Landlord directed me to clause 54 of the tenancy agreement, though review of the clause indicates that only the Landlord, not the Tenant, provided an email address for service.

I am unable to find that the video was served in accordance with the *Act* as the Landlord has failed to demonstrate email is an approved form of service. As I cannot confirm service of the video, it is not included and considered as to do so would be procedurally unfair to the respondent Tenant.

The Landlord stated that three documents provided to the Residential Tenancy Branch on November 28, 2022 were served on the Tenant by way of email sent on the same date. Again, email is not an approved form of service. I would also note that the Rule 10.3 of the Rules of Procedure requires applicants for expedited hearings to serve all of the evidence they intend to rely upon within 1 day receiving the Notice of Dispute Resolution. The Landlord's additional evidence is in further contravention of Rule 10.3 of the Rules of Procedure. The documents are excluded as they were not served in accordance with the *Act*.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession without issuing a notice to end tenancy?
- 2) Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on June 1, 2022.
- Rent of \$2,350.00 is due on the first day of each month.
- A security deposit of \$1,175.00 was paid by the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord.

The Landlord called T.G. as a witness, who indicated he is a tenant with a basement suite adjacent to the Tenant. T.G. testified that the Tenant smokes within his rental unit, including an incident in which he blew smoke under the door to the rental unit. T.G. further testified that the Tenant plays loud music to such an extent that it causes vibrations, which at one point was so severe that it knocked a lamp onto the floor. T.G. also indicates that the Tenant has many people coming and going from the rental unit. T.G. finally testified that he and his co-tenant intend on vacating the rental unit should the Tenant continue to reside at the property.

I am advised by the Landlord's agent that Landlord has lost tenants due to the Tenant's conduct, including an incident in which the police were called. J.M. identified himself as the son of the former upper unit tenants. J.M. testified that his parents had a series of interactions with the Tenant, including one in which the Tenant was said to have knocked on their door and yelled at J.M.'s father to come outside and settle their dispute like men. J.M. testified that he assisted his parents in moving out the property as soon as was practicable under the circumstances. J.M. further testified to an incident that occurred on or about November 16, 2022 when he was at his parents in which the Tenant again threatened J.M.'s father, played music so loud the house shook, and drove back and fourth on the street in front of the residential property revving his vehicle's engine.

The Landlord's agent indicated that the Tenant had assaulted the upper unit tenant, saying this occurred on November 11, 2022. However, J.M. denied the Tenant assaulted his father.

The Landlord's evidence also includes copies a One-Month Notice to End Tenancy signed on September 26, 2022 and a 10-Day Notice to End Tenancy signed on October 2, 2022. The One-Month Notice to End Tenancy has an effective date of October 30, 2022 and cites smoking and noise related issues.

Analysis

The Landlord seeks an early termination to the tenancy.

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between ss. 47 and 56 is that under s. 56(2)(b) a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline #51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment. The issue I have with the present application is that the Landlord has failed to provide sufficient supporting evidence to support the application of s. 56 of the *Act*.

I am provided with direct evidence from T.G. that the Tenant is smoking within his rental unit and playing music so loudly that it vibrates his rental unit. Undoubtedly, the noise complaint would certainly support a finding that the Tenant is unreasonably disturbing the other occupants. However, mere noise complaints are insufficient to support a finding that it would be unreasonable or unfair to wait for a One-Month Notice to End Tenancy to take effect. Policy Guideline #51 is clear that such circumstances only exist when there is a significant threat to people or property. Neither noise nor smoking rise to this level.

The Landlord's agent submitted that the upper tenant had been assaulted by the Tenant. Written submissions from the Landlord indicate this occurred on November 11, 2022. However, this was directly denied by the upper tenant's son, who said that what had occurred, to his knowledge, was that the Tenant tried to pick a fight with his father. The issue with J.M.'s evidence is that he was not present for the incident. The upper tenants did not testify, nor did they provide a written statement detailing what had occurred. It would seem to me that if one were to seek an order for the early termination

of a tenancy, one would get direct evidence from those affected by a tenant's conduct. I am left with the testimony of an individual who has second hand knowledge of what had occurred, who's evidence directly contradicted one of the key points raised by the Landlord. I do not believe this is sufficient evidence to support granting an order of possession without need for issuing a notice to end tenancy.

I find that the Landlord has failed to provide sufficient evidence to support a finding that it would be unreasonable or unfair to wait for a notice to end tenancy issued under s. 47 of the *Act* to take effect.

As a final note, the One-Month Notice provided to me by the Landlord has an effective date of that notice expiring on October 30, 2022. Review of the application shows that it was finalized on November 11, 2022. The One-Month Notice cites issues related to smoking and noise. In other words, the Landlord has issued a One-Month Notice, it has taken effect, and it does cite the same issues raised in this application. It seems incongruous, in my mind, to apply for an order of possession under s. 56 of the *Act* on the basis that it would be unreasonable or unfair for a notice to end tenancy under s. 47 to take effect when a notice to end tenancy has been issued under s. 47 and that notice has taken effect.

Accordingly, I dismiss their application without leave to reapply.

Conclusion

I dismiss the Landlord's application under s. 56 of the *Act* without leave to reapply.

The Landlord was unsuccessful in their application. Accordingly, I find that they are not entitled to the return of their filing fee. Their application under s. 72 of the *Act* is dismissed without leave to reapply.

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: December 01, 2022

Residential Tenancy Branch