Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the Landlords' application under the *Residential Tenancy Act* (the "Act") for an order for early end to the tenancy and an Order of Possession of the rental unit pursuant to section 56.

The Landlords attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 9:57 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlords and I were the only ones who had called into the hearing.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlords confirmed that they served the Tenants with the notice of dispute resolution proceeding package and supporting documentary evidence (collectively, the "NDRP Packages") by registered mail on September 9, 2022. The Landlords submitted registered mail tracking numbers (referenced on the cover page of this decision). Tracking records indicate that the packages were delivered on September 13, 2022. I find the Tenants were served with the NDRP Packages in accordance with sections 88(c) and 89(2)(b) of the Act on September 13, 2022.

Preliminary Matter – Parties' Future Dispute Resolution Hearing

The Landlords submitted, as part of their evidence for this application, a 10 day notice for unpaid rent or utilities dated August 2, 2022 and a direct request worksheet for unpaid rent. During the hearing, the Landlords confirmed that the parties have another hearing scheduled for January 6, 2023 (file number referenced on cover page of this decision), which deals with the Landlords' application for an Order of Possession and Monetary Order for unpaid rent. The Landlords testified that the Tenants have not paid any rent since August 2022 and have not vacated the rental unit.

Applications under section 56 of the Act for an early end to the tenancy, such as this application, are typically scheduled as expedited hearings. According to Rules 10.7 and 10.8 of the Rules of Procedure, an application for an expedited hearing may only be amended at the hearing and cross-applications must be heard separately. Residential Tenancy Policy Guideline 51. Expedited Hearings ("Policy Guideline 51") explains that these rules essentially serve to prevent applicants from "queue jumping" and "bypass[ing] normal service and response time limits to get a quicker hearing". Policy Guideline 51 states that applications for "monetary claims or orders of possession for unpaid rent are not considered for expedited hearings".

However, this application was scheduled as a standard hearing rather than an expedited one. Records indicate that the Landlords did not meet the evidentiary threshold for this hearing to be scheduled on an expedited basis.

Regrettably, I have determined through consultation with arbitrator managers that the scheduling of this application as a standard hearing rather than expedited one does not necessarily facilitate an amendment of this application which would enable me to also deal with the issues in the January 6, 2023 application, even though I have heard the Landlords' testimony relevant to both applications in this hearing.

For reference, Rules 2.2, 6.2, and 4.2 of the Rules of Procedure explain what may be considered at a dispute resolution hearing and how applications may be amended at the hearing:

> **2.2 Identifying issues on the Application for Dispute Resolution**
> The claim is limited to what is stated in the application.
> See also Rule 6.2 [*What will be considered at a dispute resolution hearing*].

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

(emphasis added)

Upon further reflection, I find that an amendment of this application at the hearing to deal with the issues to be addressed in the Landlords' other application do not constitute "circumstances that can reasonably be anticipated", as the Tenants did not attend this hearing and may expect that the issues of unpaid rent will be dealt with on January 6, 2023. In light of this concern, which relates to matters of procedural fairness and may impact the integrity of any decision rendered, I conclude it is more appropriate to limit the consideration of specific issues to their respective applications.

As such, in this decision I will only address the Landlords' application for an early end to the tenancy and to request an Order of Possession under section 56 of the Act.

The Landlords' application for issues relating to unpaid rent will be dealt with on January 6, 2023 as originally scheduled.

Issue to be Decided

Are the Landlords entitled to an early end to the tenancy and an Order of Possession under section 56 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on June 1, 2022 and is for a fixed term ending on May 31, 2023. Rent is $2,500.00 per month, due on the first day of each month. The Tenants paid a security deposit of $1,250.00 which is held by the Landlords.

According to the Landlords' application, the Landlords had issued a 10 day notice to end tenancy for unpaid rent to the Tenants in July 2022. The Landlords did not hear back from the Tenants and assumed that they had left the rental unit.

The Landlords testified they posted a 24-hour notice of inspection on the Tenants' door. The Landlords submitted a copy of this notice, dated July 29, 2022, into evidence. The notice states that entry will be on July 30, 2022 for "showing to prospective tenants".

The Landlords testified that on July 30, 2022, they were at the rental property with the downstairs tenants when they head yelling and screaming upstairs in the rental unit. The Landlords testified that it sounded like the male Tenant was beating up the female Tenant. The Landlords explained they called the police, who came and separated the Tenants and had a chat with each of them. The Landlords testified that the police determined the Tenants had gotten into a fight, but there was no evidence that they did anything further.

The Landlords stated the next morning they went to knock on the door of the rental unit, but no one answered, and the Landlords found the glass screen door to be smashed. The Landlords confirmed they were unable to open the front door. The Landlords testified that the Tenants wrote notes on the door claiming that it was unlawful for the Landlords to enter the premises regardless of the 24-hour notice that they had posted. The Landlords stated that the Tenants also wrote similar messages on the cement patio using chalk. The Landlords submitted photographs of the broken front door glass screen as well as photographs of the graffiti on the patio and windows into evidence.

The Landlords indicated by that point, they felt there was a safety concern and that given what had happened the night before, they felt that "something could happen down

the road". The Landlords explained they had made this emergency claim based on that safety issue.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Is the Landlord entitled to end the tenancy early and an Order of Possession?

In this case, the Landlords bear the onus of proving that this tenancy should be ended early and an Order of Possession be granted.

Section 56 of the Act states as follows:

> **Application for order ending tenancy early**
> 56(1) A landlord may make an application for dispute resolution requesting
> (a) an order 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) an order granting the landlord possession 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Policy Guideline 51 further states:

> 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).
>
> Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:
>
> - A witness statement describing violent acts committed by a tenant against a landlord;
> - Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
> - Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
> - Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.
>
> (emphasis added)

Based on the photographs submitted by the Landlords, I find that the lower half of the glass on what appears to be a glass screen door or storm door was smashed. I find the

rental unit's primary wooden door, which is behind the glass screen door, to be intact such that entry into the rental unit has not been breached.

I find there is a message written on the upper half of the glass screen door which reads: "WE THE TENANTS DENY ACCESS DUE TO FEELINGS OF DISCOMFORT ANY ENTRANCE IS UNLAWFUL".

I find the chalk message on the cement patio states (portions redacted for privacy and portions illegible due to having been washed away): "[The Landlords] ARE HEARTLESS LANDLORDS [illegible] CHILREN [illegible] YOUNG [illegible] WERE STRUGGLING LATE ON RENT ONCE JUST A HEADS UP!"

I find the photograph of the rental unit's glass windows appear to have had messages written on them but were then scrubbed away.

I find the Landlords say they found the glass screen door damaged but do not say that they had witnessed how it was damaged. Based on the photographs submitted, I find the damage to the glass screen door, while certainly not minimal, to be insufficient for meeting the threshold of "extraordinary" damage under section 56(2)(a)(v) of the Act. As mentioned, I find the damage to consist of broken glass on the bottom half of the glass screen door. In contrast, Policy Guideline 51 refers to a tenant who has "repeatedly and extensively vandalized" the landlord's property and "extraordinary damage caused by a tenant producing illegal narcotics" as examples which would warrant the tenancy being ended. Moreover, I find there is insufficient evidence to suggest that the Tenants have put the property "at significant risk", since the damage does not render the property unsecured.

I find the damage in this case would be more appropriately dealt with under section 47(1)(g) of the Act. For reference, section 47(1)(g) permits a landlord to issue a one month's notice to end tenancy for cause where "the tenant does not repair damage to the rental unit or other residential property, as required under section 32(3) [*obligations to repair and maintain*], within a reasonable time". Section 32(3) of the Act states that a tenant "must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant".

In addition, I find that one incident of domestic disturbance is not sufficient in the circumstances to constitute "significant" interference or "unreasonable" disturbance to

the Landlords or other occupants warranting an end to the tenancy, although I accept that there was a disturbance at the rental unit on July 30, 2022. I find the evidence does not suggest that there was any police follow-up or that anyone had been injured due to this incident.

Although the Landlords stated that they had safety concerns, I find there is insufficient evidence to show that there is an ongoing threat of harm or violence against the Landlords or the downstairs tenants. I find there is insufficient evidence to show that the Tenants have "seriously jeopardized" the health, safety, or a lawful right or interest of the Landlords. I also find the Landlords do not allege that the Tenants have engaged in any "illegal activity" within the rental unit.

I note that applications under section 56 are for emergency situations with "very serious beaches", where a landlord must also demonstrate that "it would be unreasonable, or unfair to the landlord or other occupants" to wait for a one month notice to end tenancy for cause to take effect. Overall, I find the Landlords have not provided evidence to demonstrate this. I note the Landlords did not submit this application until September 1, 2022, which was approximately one month after the incident had occurred on July 30, 2022.

Based on the foregoing, I am unable to conclude that the Landlords have met the test in section 56 to show that this tenancy should be ended early.

Conclusion

The Landlords have not provided sufficient evidence to demonstrate that an early end to the tenancy is warranted under section 56 of the Act. Accordingly, this application is dismissed without leave to re-apply.

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 21, 2022

Residential Tenancy Branch