



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This is an application by the landlord to end the tenancy early by way of an expedited hearing and seeking;

- an order of possession for the subject residential property

The landlord attended the hearing represented by MO. The tenants attended represented by CH. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The hearing was conducted by conference call. The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

I confirmed service of the dispute notice and hearing package with the tenants. The tenants advised that they were missing some documents in the package, specifically documents marked evidence_6 and evidence_7. As such I will only consider the documents which were properly served on the tenants. The dispute notice and the materials confirmed received by the tenants were properly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the landlord entitled to an order ending the tenancy early?

Background and Evidence

The tenancy commenced on July 1, 2022, for a one year fixed term. Rent is \$3,400.00 per month due on the 31st day of each month. The landlord holds a security deposit of \$1,700.00 and a pet deposit of \$1,700.00 in trust for the tenants. The tenants still occupy the rental unit.

The subject residential property is a single detached dwelling with two rental suites, one upstairs and one downstairs. The tenants occupy the upstairs rental unit.

The landlord provided a written statement in evidence outlining the reasons why he wished to end the tenancy early. He alleges that the tenants have blocked access of the occupants in the other rental suite to common areas including the backyard and driveway. Additionally, the tenants have refused to allow the other occupants access to the mailbox that is shared by the two rental units and have complained to the other occupants about cooking smells emanating from the other rental unit. He also alleges that the tenants are in arrears on rent and utilities and that it would be unfair to wait for a hearing to determine whether he is entitled to an order of possession on that basis. The landlord provided a photo in evidence of the tenants' truck blocking the driveway as well as a letter written by the tenants to the occupants of the downstairs rental unit. The tenants confirmed specifically that they received these documents in the landlord's evidence package.

The tenants stated that they have not blocked the other occupants from accessing the common areas of the rental property, however they have restricted access to the common mailbox.

The landlord confirmed that he served a notice to end tenancy on the tenants under section 47 of the Act and is seeking an order of possession pursuant to that notice at a hearing scheduled on February 3, 2023.

Analysis

Section 56 of the Act states in part:

(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;

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.

RTB Rules of Procedure 6.6 states, “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, in this case, the landlord.

The letter written by the tenants to the other occupants confirms that the tenants will not allow access to the driveway, and that the occupants were advised by the tenants that they only have access to one half of the yard. The tenants confirmed in the hearing that they will not allow the occupants to have access to the mailbox. The complaints and actions of the tenants do not rise to the level of severity that would justify ending the tenancy early under section 56 of the Act.

The allegation that the tenants are in arrears on rent is the subject of a section 46notice served on the tenants. I find that it is not unreasonable to require the landlord to wait for the hearing that he currently has scheduled for February 3, 2023, seeking an order of possession for the rental unit based on the notice issued under section 46 of the Act.

However, the parties are reminded that the nature of shared rental spaces require a mutual respect and understanding of the realities that accompany sharing a multi unit living space, which includes but is not limited to occasional unreasonable disturbances, and the parties are therefore encouraged to be cooperative and negotiate reasonable access to shared spaces.

The landlord’s application to end the tenancy on an expedited basis is dismissed.

Conclusion

The landlord’s application is dismissed. The tenancy shall continue until it is ended in accordance with the Act.

The landlord must bear the cost of their own 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 *Residential Tenancy Act*.

Dated: December 19, 2022

Residential Tenancy Branch