



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

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 by way of an order of possession pursuant to section 56 of the Act and to recover the cost of the filing fee.

The landlord and the tenants attended the teleconference hearing. The parties were affirmed and both parties were provided the opportunity to ask questions during the hearing. 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 tenants confirmed that they had been served with documentary evidence and had the opportunity to review that evidence. The tenants confirmed that they did not serve documentary evidence. I find the tenants were sufficiently served given the above. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession?
- If yes, is the landlord entitled to recover their filing fee?

Background and Evidence

A copy of the month-to-month tenancy agreement was submitted in evidence. The tenancy began on March 28, 2022.

The landlord has written the following as to the reason for their application under section 56 of the Act:

Verbal abuse, safety of myself, grandchild & others at risk because of dogs.
Police file has been started. Threatening behaviour by tenants - see attached A
Expedited Hearing evidence.
[reproduced as written]

During the hearing both parties presented evidence regarding the height of the tenants' fence to enclose their two large dogs (Dogs). The evidence before me was that the tenants had originally had a fully enclosed six-foot fence (Dog Enclosure) where their Dogs were kept and that in June 2022, the tenants changed the location of one portion of the Dog Enclosure to connect to the landlord's four-foot fence (Landlord's Fence).

The tenants stated that the landlord had no issue with that in June 2022, which the landlord confirmed during the hearing and that only after the fact did safety concerns occur as the landlord stated they have an autistic grandchild who may reach through the Landlord's Fence and runs away from school so is hard to manage.

In addition, the landlord submitted an email that the tenants wrote to a police officer dated January 8, 2023, which reads as follows:

From: paul novack <[REDACTED]>
Sent: January 8, 2023 11:28 AM
To: Banks, Colin <[REDACTED]rcmp-grc.gc.ca>
Cc: Trish woodward <[REDACTED]>
Subject: Herrassment at [REDACTED] saywars rd

Hi Colin, I would like for u to have a conversation with Patricia W [REDACTED] at [REDACTED] sayward rd.
On Saturday Jan 7 2023 her son and his family visited her property and when they were entering her gate either her son or grandson was yelling derogatory comments towards Tanya who was standing at our doorway calming our dogs from barking at them. I will not tolerate any herrassment of any sort from anyone. Should this happen again I will be forced to take matters into my own hands.
I would appreciate your assistance in upholding the peace.
Ty Paul N [REDACTED]

Finally, the landlord presented a copy of a warning sign that the tenants placed on the Landlord's Fence to show that the tenants' Dogs are vicious as follows:



Both parties confirmed having a future hearing scheduled for April 18, 2023 regarding a One Month Notice to End Tenancy for Cause (1 Month Notice). The tenants asked if this hearing was to replace the April 18, 2023 matter, and all parties were confirmed that this matter is not related to the April 18, 2023 matter and that both will be heard independently of one another. The parties confirmed that the issues being alleged in the 1 Month Notice are directly related to what was raised in the matter before me.

Analysis

Based on the testimony of the parties and on a balance of probabilities, I find the following.

The burden of proof is on the landlord to prove that it would be unreasonable, or unfair to the landlords or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

In the matter before me, the parties confirmed that there is another hearing scheduled for April 18, 2023 and that these issues are related to the 1 Month Notice that was issued.

I find that the landlord's testimony was contradictory. I have reached this finding by the landlord admitting that they approved the connection of the tenants' six-foot fence Dog Enclosure, with the Landlord's Fence. In addition, I find that the landlord would have already known about their grandchild having autism in June 2022 when the landlord took no issue with the Dog Enclosure being connected to the Landlord's Fence. As such, I find that having an issue after the fact, does not justify ending the tenancy via the high burden of proof set out under section 56 of the Act.

Furthermore, I find the email sent by the tenants to the police does not threaten the landlord as claimed by the landlord and that if it did, the police would have attended the tenants' residence to act on any threats, which there was no evidence before me to support.

As a result, 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 notice to end tenancy under section 47 of the Act. Therefore, **I dismiss** the landlord's application in full due to contradictory and insufficient evidence.

As the landlord did not succeed with their application, **I do not grant** the landlords the recovery of their filing fee.

This decision will be emailed to both parties.

The parties are encouraged to attend the dispute resolution hearing already scheduled for April 18, 2023 as indicated during the hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: January 30, 2023

Residential Tenancy Branch