



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for an early end to the tenancy pursuant to section 56;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. J.H. represented the landlord in this hearing.

While the tenant acknowledged receipt of the landlord's application for dispute resolution, the tenant claimed that she did not receive any evidence from the landlord in support of the application. J.H. submits that the application including a USB stick was posted to the tenant's door on January 10, 2023. The tenant insisted that the package only contained 6 pages of the application documents but no USB stick. J.H. testified that he had a picture of the package and USB stick posted to the tenant's door as evidence; however, this evidence of service was not provided on file.

Further, J.H. acknowledged that the landlord did not confirm with the tenant if she had the playback equipment or ability to access the digital evidence as required under Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure.

The onus is on the landlord to establish that the evidence was served on the tenant. The tenant denies receipt of the USB stick containing the landlord's evidence. I find the landlord provided insufficient evidence to prove service. If the landlord had complied with Rule 3.10.5 this issue would likely have been caught prior to the hearing as the tenant would have at that time confirmed receipt of the USB stick.

I am not satisfied that the tenant was served with the landlord's evidence package; accordingly, the landlord's evidence submissions were excluded from this hearing.

Issues

Is the landlord entitled to an order of possession for an early end to the tenancy?

Is the landlord entitled to recover its filing fee?

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in 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;
- caused extraordinary damage to the residential property.

In addition to showing at least one of the above-noted causes, **the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a One Month Notice for cause to take effect.**

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect. The landlord had submitted multiple video files and witness statements from other tenants in support of the application. However, as noted above, the landlord's evidence package has been excluded from this hearing. The tenant was denying all the landlord's accusations. Given the nature of this application and the tenant's denying of the landlord's allegations, it would not be possible for the landlord to be successful in this application without any supporting evidence.

Accordingly, I dismiss the landlord's application for an early end to the tenancy with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application is dismissed.

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: January 23, 2023

Residential Tenancy Branch