



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFT

Introduction

On December 22, 2022, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, with J.L. attending as an agent for the Landlord; however, neither Tenant attended the hearing at any point during the 31-minute teleconference. All parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 9:30 AM and monitored the teleconference until 10:01 AM. Only the Applicant and her agent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only other person who had called into this teleconference.

J.L. advised that a separate Notice of Hearing and evidence package was served to each Tenant by registered mail on January 18, 2023 (the registered mail tracking numbers are noted on the first page of this Decision). He referenced the tracking slips and proof of service forms to corroborate service, and he stated that these packages were refused, but not yet returned to sender. Based on this undisputed testimony and

evidence before me, I am satisfied that the Tenants were deemed to have received the Landlord's Notice of Hearing and evidence packages five days after they were mailed. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

J.L. advised that the tenancy started on September 3, 2022, that the rent was established at \$1,150.00 per month, although no rent has been paid ever, and that it was due on the first day of each month. A security deposit of \$575.00 was owed according to the tenancy agreement; however, it was not paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

J.L. submitted that the Landlord had no intention of renting to B.M., and he was included on the tenancy agreement as an occupant only; however, this was not indicated as such on the agreement. He advised that only Tenant M.P. signed the tenancy agreement, and that she did not move in because of B.M.'s conduct. However, he indicated that B.M. moved in and has neither paid any rent, nor a security deposit. He stated that there have been a number of emailed complaints from the strata about B.M.'s behaviour ranging from leaving emergency doors open, to dealing and smoking drugs in the lobby of the building, to verbally attacking the caretaker while a guest of B.M. was there with a

weapon. He advised that the police have been called on four, separate occasions due to incidents involving B.M.; however, the Landlord cannot get any further details on how the police responded to these incidents due to freedom of information issues.

He testified that B.M. is currently on probation, and he cited documentary evidence of B.M.'s lengthy criminal history, which included uttering threats, arson, and illegal possession of a firearm. He advised that the residents of the building are fearful for their safety and that none of the strata, the caretaker, or other residents will testify or provide any statements as they are concerned for their welfare.

He referenced emails submitted as documentary evidence, from the strata, outlining complaints related to B.M.'s behaviours and actions. Regarding the allegations of the caretaker being "verbally attacked", he is unaware of what exactly was said to the caretaker. Moreover, while the strata claimed that B.M.'s guest had a "weapon", he could not identify what this object was, or if this was used in a threatening manner.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants, or a person permitted on the residential property by the Tenants, have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *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;*
- *engaged in illegal activity that 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;*

- *engaged in illegal activity that 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, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

When reviewing the totality of the evidence before me, I note that it is the Landlord's position that B.M., and guests of his, have been involved in a number of incidents on the property that would justify an early end to this tenancy. I also find it important to note that the threshold for granting an Order of Possession on this type of Application is extremely high, and is generally reserved for the most serious of circumstances such as: violence, death threats, extraordinary damage to the rental unit, just to name a few. While I note that I have the testimony from the Landlord, and from J.L., regarding some alleged incidents that might meet this threshold, I do not find that there is sufficient, direct, documentary evidence to support the extent of what has been alleged.

I accept that the caretaker of the building has been "verbally attacked"; however, there is no evidence before me of what specifically was stated to the caretaker to satisfy me that this person's safety was threatened. Moreover, while it was claimed that B.M.'s guest was carrying a "weapon", neither the Landlord, nor J.L., could speak to what exactly this object was, or whether it would even be considered a weapon. Even verbal testimony from any persons that had witnessed these incidents and could have provided details of what transpired, to corroborate the Landlord's submissions, would have likely resulted in the end of this tenancy.

However, what I have left before me is documentary evidence of B.M.'s past criminal history, with some complaints of activities caused by him or his guests, that would possibly meet the threshold of ending the tenancy based on a One Month Notice to End Tenancy for Cause. I acknowledge that there is circumstantial evidence outlining unacceptable and deplorable behaviours, that a direct correlation could possibly be drawn between B.M.'s past behaviours and his current actions, and that what has been submitted by the Landlord is not beyond the realm of possibilities of what may be happening currently. Regardless, based on the totality of the evidence before me, I am not satisfied that the Landlord has provided compelling or persuasive evidence to satisfy the elevated threshold that would warrant ending this tenancy early based on this type of Application. Consequently, I find that the Landlord is not entitled to an Order of Possession, and I dismiss this Application in its entirety.

I do find it important to note though that B.M.'s actions and negligent, detrimental behaviours, if corroborated, may support the formation of, and the justification for, ending the tenancy with a One Month Notice to End Tenancy for Cause, which has already been served on B.M.

As the Landlord was not successful in this claim, I find that she is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Landlord's Application 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: February 9, 2023

Residential Tenancy Branch