



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASK WELLNESS SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on January 9, 2023 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlord's Agents K.P., K.G. L.M., the Tenant, and the Tenant's Advocate Y.B. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Notice of Hearing and the Landlord's evidence package. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The Tenant confirmed that they did not submit any evidence in response to the Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following terms of the tenancy; the tenancy began on February 1, 2022. Currently, the Tenant pays rent in the amount of \$850.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$425.00. The Tenant continues to occupy the rental unit.

The Landlord's Agents stated that the Tenant has improved their behaviour as of late, however, the Landlord's Application was made in response to an incident which took place on November 24, 2022 in which the Tenant was heard scream at 5:00am for about three hours. The Landlord's Agents stated that this disrupted the Landlord and other occupants at the rental property. The Landlord's Agents stated that the Police were called along with a mental health support worker to settle the Tenant during this incident.

The Landlord's Agents stated that there have been other concerning incidents involving the Tenant hiding in the elevator to scare people, running around naked in the common areas and being seen underdressed in the snow. The Landlord's Agents stated that the Tenant has become unpredictable and has caused fear and anger amongst the other occupants at the rental property.

The Landlord provided written statements from other occupants at the rental property, expressing their concerns in support. The Landlord's Agents stated that they provide housing to seniors and that the Tenant's actions have breached their quiet enjoyment. The Landlord's Agents stated that a One Month Notice to End Tenancy for Cause has been issued to the Tenant on November 24, 2022.

The Tenant responded by stating that they have since disputed the One Month Notice and that the parties have a hearing scheduled on April 28, 2023. The Tenant provided the File Number corresponding to their application which has been recorded on the cover page of this decision.

The Tenant's Advocate stated that the Landlord has provided insufficient that the Tenant's actions demonstrates immediate and severe risk. The Tenant's Advocate stated that this is apparent based on the fact that the incident took place on November 24, 2022, while the Landlord waited until January 9, 2023 to submit their Application to end the tenancy early.

The Tenant and their Advocate stated that there have been no further incidents since November 24, 2022. The Tenant denies that she intentionally interfered with other

occupants. The Tenant stated that she has a health condition which at times, causes the Tenant to scream during her sleep. The Tenant denies the other incidents as described by the Landlord's Agents.

Analysis

Based on the documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

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...

- (a) The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, the Landlord's Agents indicated that the reason for seeking an order of possession was primarily in relation to an incident that took place on November 24, 2022. The Landlord's Agents stated that the Tenant's behaviour has improved as of late. The parties agreed that the Landlord has served a One Month Notice to End Tenancy.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I agree with the Tenant's Advocate that the Landlord's Application was made over two months after the November 24, 2022 incident took place. I find that this demonstrates a lack of urgency, which takes away from the immediate and severe risk that the Landlord is required to demonstrate in this type of Application. While the Landlord may have sufficient cause to end the tenancy based on the One Month Notice, I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act.

In light of the above, I dismiss the Landlord's Application, without leave to reapply.

As the Landlord was not successful with their Application, the Landlord is not entitled to recover the filing fee from the Tenant.

Conclusion

The Landlord has issued a one month notice to end tenancy for cause; however, they had insufficient evidence to prove it should end earlier under section 56. The tenancy will continue until ended in accordance with the Act.

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 02, 2023

Residential Tenancy Branch