



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on February 17, 2023 seeking an order for an early termination of the tenancy. This is on the basis that the Tenants (hereinafter, the “Tenant”) poses an immediate and severe risk to the property, other occupants or the Landlord. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 13, 2023. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the hearing; the Tenants did not.

Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding to the Tenant

The Landlord stated that they delivered the Notice of Dispute Resolution Proceeding to the Tenant by attaching a copy to the door at the rental unit. This was one package to each named Tenant, including the prepared evidence.

The Landlord also described visiting the rental unit in the week prior to the hearing. They interacted with the Tenant, and the Tenant informed the Landlord they would be waiting for the upcoming hearing.

From what the Landlord presents here on notifying the Tenant of this hearing, I am satisfied they served the Tenant notice of this hearing, as they stated, on February 22, 2023.

Reciprocally, the Landlord stated they did not receive evidence from the Tenant for this hearing. I exclude all evidence the Tenant submitted for this hearing in my consideration below, with no proof the Tenant provided this information to the Landlord separately.

Issues to be Decided

- Is the Landlord entitled to an order of possession that ends the tenancy for cause and without notice by s. 56 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord confirmed the details of the tenancy agreement they had with the Tenant. The start date was September 15, 2022, for a fixed term expiring on June 15, 2022. The monthly rent was \$2,600, payable on the 15th of each month. The Landlord specified that the Tenant also signed a copy of the agreement even though the copy in their evidence appears as unsigned by the Tenant.

The Landlord provided evidence to show how they feel the conduct of the Tenant is the reason to end the tenancy. This involves the Tenant not paying rent since September 2022, with \$13,929 owing as of the date of the Landlord's Application. Additionally, the Landlord presented that the Tenant owes \$2,705.35 in utilities bills. The Landlord issued a notice to end tenancy in February 2023 for the reasons of unpaid rent and utilities.

Acknowledging they had an agreement in place with the Tenant regarding repairs to another Landlord-owned property, completed by the Tenant as payment of rent. The Landlord stated the Tenant was now "mixing up" payment of rent with repairs, leaving rent unpaid. As of the date of the hearing, the unpaid amount was \$19,334.35.

Aside from this overarching issue, the Landlord described electronic components stolen from that separate property worksite. This required the Landlord to change the locks at that property, thereby barring the Tenant's entry. The Tenant also has two additional people living at that worksite. The Tenant is also keeping a pet in the rental unit.

In their written summary, the Landlord also provided the following points:

- if the Tenant finished work by January 31, 2023 – worth \$11,000 – the Landlord would not claim rent from September 2022 to January 31, 2023
- the Tenant was 10% completed the required work by end of January
- the completed work was “not up to code”
- the Landlord observed drug paraphernalia at the worksite property upon one of their visits
- they filed a report with the police regarding stolen property from the worksite property
- on February 13, they served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end tenancy were given under section 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.

Following this, s. 56(2) sets out two criteria. First, a landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to a landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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;
 - (iii) put the landlord's 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 . . .

I have considered the evidence of the Landlord concerning the conduct of the Tenant.

The amounts of rent and utilities owing from the Tenant are not the proper subject of this type of hearing. That is the proper matter of the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities that the Landlord issued separately. The Landlord is free to take next steps in that process while following the *Act*.

I am not satisfied the Tenant's other conduct constitutes imminent harm or danger to either the Landlord, other residents, or the Landlord's other property. The Landlord provided that they since took steps to bar the Tenant from entering that worksite property; aside from this, it is a separate property that is not the subject rental unit governed by the *Act* and the tenancy agreement between the parties in this situation. That separate property would not be subject to any of the Landlord's rights and obligations with respect to the rental unit.

Aside from this, the Landlord did not provide ample proof of the Tenant's illegal activity such that it would constitute urgent circumstances. I find this conduct, as described by the Landlord, is not on a level with what is set out in section 56(2). There is no jeopardy to health or safety, and I am not satisfied of the risk to property. Applications of this sort are for very serious breaches; however, I do not see a serious breach in place here which threatens other occupants or the property of the landlord.

In conclusion, I find the evidence presented here on the Tenant's behaviour does not rise to a level that is sufficient to end the tenancy in this manner. This is based on the evidence presented by the Landlord in this hearing.

I understand the issue presents difficult circumstances for all parties involved and is exacerbated by the conduct of the tenants. Given the section of the legislation the Landlord has applied on to end the tenancy, an imminent danger with palpable effects is not proven in the evidence. The Landlord has not shown that this means of ending the tenancy must happen over and above that of other sections applicable in the *Act*.

An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or other resident, so significant that it

would warrant the tenancy end sooner than had the landlord issued a One Month Notice to End Tenancy for Cause. I find that the evidence and oral testimony presented by the Landlord does not show this to be the case.

I find the Landlord has not proven there is a valid reason to justify an order that ends the tenancy early by application of s. 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a s. 47 one-month Notice to End Tenancy.

Because the Landlord was not successful in this application, they are not entitled to a return of the application filing fee.

Conclusion

I dismiss the Landlord's application for an early end of tenancy and an order of possession for the rental unit, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 13, 2023

Residential Tenancy Branch