



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords February 18, 2023 (the “Application”). The Landlords applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlords also sought reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlords’ evidence.

The Landlord testified that the hearing package and their evidence were posted to the door of the rental unit February 24, 2023. The Landlords provided a Proof of Service to confirm service. The Landlord testified that they also left a second package of evidence on the Tenant’s table March 08, 2023. The Landlord testified that the second package included evidence submitted after February 24, 2023.

Based on the undisputed testimony of the Landlord and Proof of Service, I accept that the Tenant was served with the hearing package and first set of evidence February 24, 2023, in accordance with sections 88(g) and 89(2)(d) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the documents February 27, 2023. I find the Landlords complied with rule 10.3 of the Rules in relation to the timing of service of the hearing package and first set of evidence.

In relation to the second package of evidence, leaving this on the Tenant's table in the rental unit is not a form of service permitted by the *Act* and therefore the Landlords failed to comply with the Rules in relation to service. Pursuant to rule 3.17 of the Rules, I have excluded the evidence submitted after February 24, 2023, because I find it would be unfair to the Tenant to consider it when it was not properly served.

Given I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted a written tenancy agreement between the parties.

The Landlord testified about issues they have had with the Tenant including domestic violence incidents which resulted in police attendance and the location of a weapon, drug use, selling drugs, having visitors at all hours that disturb the upstairs tenants and neighbours and police attending to search for the Tenant and breaking the windows and doors of the rental unit. The Landlord testified that police have attended the rental unit to search for the Tenant and their guests several times. The Landlord testified that their insurance company would not do work in the rental unit due to drugs being in the rental unit and requiring it to be cleaned before they would do work in the rental unit. The Landlord testified that the upstairs tenants have recorded a conversation with the Tenant about selling drugs. The Landlord testified that people come and go from the rental unit looking for drugs and this has been reported to police. The Landlord testified that them and the neighbours of the rental unit are very distressed about the situation.

The Landlords submitted evidence to support their position.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause issued under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlords, as applicants, have the onus to prove the circumstances meet the above two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the undisputed testimony of the Landlord and based on it, as well as the documentary evidence, I accept the circumstances as set out by the Landlord. I accept that the Tenant and their guests have significantly interfered with and unreasonably disturbed the upstairs tenants and the Landlord who must deal with complaints about the Tenant and their guests. I also accept that the Tenant is selling drugs from the rental unit and engaging in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the upstairs tenants.

Further, I accept that it would be unreasonable and unfair to require the Landlord to wait for a One Month Notice to End Tenancy for Cause issued under section 47 of the *Act* to take effect because the circumstances involve weapons, drugs and police attending multiple times due to the behaviour of the Tenant or their guests. I find it particularly troubling that police have attended and broken windows and doors of the rental unit searching for the Tenant. I also find it concerning that the Landlord's insurance company will not deal with damage to the rental unit due to the presence of drugs in the rental unit. In the circumstances, I accept that the situation is urgent. I also note that the Tenant did not attend the hearing to dispute that the tenancy should end pursuant to section 56 of the *Act*.

I am satisfied the Landlords have met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlords an Order of Possession for the rental unit effective two days after service on the Tenant.

Given the Landlords have been successful, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act* and issue them a Monetary Order in this amount.

Conclusion

The Landlords are issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to reimbursement for the \$100.00 filing fee. The Landlords are issued a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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*.

Dated: March 13, 2023

Residential Tenancy Branch