



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants acknowledged receipt of all hearing documents with the exception of the new evidence submitted on April 27, 2023, and that they were ready to proceed with this matter. The tenants did not submit any written evidence for this hearing. In accordance with sections 88 and 89 of the Act, I find the tenants duly served with the landlord's application and evidence, with the exception of the evidence submitted on April 27, 2023. As the tenants were not properly served with the evidence submitted on April 27, 2023, this evidence will not be considered for the purposes of this application.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and /

or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on February 20, 2023, with monthly rent set at \$1,300.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$650.00, which they still hold.

The landlord applied for an early end to this tenancy as they believe the tenants pose a significant threat to others, including the other tenants who live on the property. The landlord testified that the tenant AS has threatened to fight the upstairs tenant's fiancé several times. The landlord testified that AS would approach the party unprovoked, cursing and insisting that the other party fight him. The landlord testified that the police have been called, and included a video of the interaction.

The landlord testified in the hearing that they were preparing a 1 Month Notice to End Tenancy for Cause to serve on the tenants, and informed the tenants of the landlord's intention to do so. The landlord testified in the hearing that the tenants were often intoxicated, and were involved in several disturbing incidents, including one on March 15, 2023 when a plumber had attended and a toilet was broken by the tenant TK. The landlord testified that the tenant AS responded "let's fight", and "I can have 30 newfies in ten minutes". The landlord submitted copies of the text message exchange between the parties. The landlord testified that they did not serve the 1 Month Notice after this interaction.

The landlord testified that they have received numerous complaints from the other tenant in the home about the tenants' behaviour. The landlord testified that since the filing of this application, the tenants continue to act inappropriately. The landlord submitted a log of the incidents from the upstairs tenant. The landlord expressed concern that the tenants were often intoxicated, and refused to be accountable for their behaviour they are in that state.

The tenants testified in the hearing that the upstairs tenant, KS, complains about everything, and would constantly call the police. The tenants testified that they were the parties being attacked and harassed, and denies breaking the toilet, or engaging in behaviour that would justify the end of this tenancy for the reasons provided in this application.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession 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* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, I need to be satisfied that the tenant has 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.

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord filed this application as they feel that the tenants pose a significant threat to the landlord and other parties who reside at, or visit the property.

The landlord confirmed that although they were about to serve the tenants with a 1 Month Notice to End Tenancy, they did not. The landlord, in their application, is attempting to obtain an early end to tenancy as they feel that the tenants have engaged in repeated incidents that have caused the main floor tenants and their guests concern and fear for their personal safety and well-being.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

In regard to the other allegation that TK had kicked a toilet while the plumber was holding it, in light of the disputed testimony, I find that the landlord has failed to provide sufficient evidence that this actually happened.

Although I acknowledge that the evidence clearly shows that the tenants are often intoxicated, I am not satisfied that these interactions are indicative of any real threat towards the landlord or other parties. I find it clear that there is an ongoing dispute between the upstairs tenants and their guests, and the tenant respondents in this dispute.

Although there may be evidence to support that the tenants have disturbed the other parties and the landlord, I find that the landlord has failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. I am not satisfied that the landlord has provided sufficient evidence to support that the tenants are an immediate or ongoing threat to them or other occupants on the property. For these reasons, I dismiss the landlord's application for an early end to this tenancy without leave to reapply.

As the landlord was not successful with their application, the landlord's application to recover the filing fee is also dismissed without leave to reapply.

Conclusion

I am not satisfied that the landlord has met the grounds required for an Order of Possession under section 56 of the *Act*. The landlord's entire application is dismissed without leave to reapply.

I order that this tenancy 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: May 01, 2023

Residential Tenancy Branch