



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to end the tenancy early due to circumstances where it would be unreasonable, or unfair to the landlord or other occupants to wait for a Notice to End Tenancy for Cause to take effect pursuant to section 56; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference connection open until 9:50 a.m. to enable the tenant to call into this hearing scheduled for 9:30 a.m. 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 the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue – service of Notice of Dispute Resolution Proceedings and exclusion of landlords evidence

The landlord attended the hearing testified that he served the Notice of Dispute Resolution Proceedings package to the tenant on April 25, 2023 by attaching it to the tenant’s door. A witnessed, signed proof of service form #RTB-9 was provided into evidence. The landlord testified that he printed all the documents emailed to him by the Residential Tenancy Branch and placed them in the package however he did not print off his evidence and include it in the package.

The landlord testified that the email sent by the Residential Tenancy Branch on April 25th didn’t advise him that he had to provide his evidence to the tenant, however during the hearing, I pointed out that the email stated the following:

The Notice of Dispute Resolution Proceeding package must include:

1. Notice of Dispute Resolution Proceeding (Dispute Notice)
2. **All evidence submitted with this application**

3. Respondent Instructions for Dispute Resolution
4. The Dispute Resolution Process RTB-114E fact sheet
5. Standing Order

As the landlord did not serve any documentary evidence to the tenant, I excluded it from consideration in this decision. I advised the landlord that only his oral testimony would be considered.

I find the tenant was sufficiently served with the Notice of Dispute Resolution Proceedings on April 28, 2023, the third day after it was posted to her door in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Should the tenancy be ended early?

Background and Evidence

The landlord testified that since the tenancy began on January 1, 2023 with rent set at \$1,250.00 per month. The unit is a lower unit of a house divided into 3 separate units, one upper and two lower. The tenant is late in paying rent and has been late since the tenancy began. She gave January and February's rent late, but it was OK with the landlord as long as she told him in advance.

In March, she didn't pay until after the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities. March's rent was eventually paid by a government agency on March 20th. April's rent came by cheque, and it came back as insufficient funds from the tenant's bank on April 6th. The landlord went to the rental unit on that day and the tenant yelled at him. The tenant has since not paid any rent for April. She keeps lying saying she paid him in cash. The tenant issued a stop payment for May's rent cheque.

The tenant has disputed the notice to end tenancy for unpaid rent and a hearing has been scheduled for June 10th.

The landlord testified that he has had complaints from the occupants of the other 2 units. People are knocking on their doors looking for the tenant. The landlord told one tenant to call the police and fire department when he complained of a bad smell coming from the tenant's unit. Last Sunday, the tenant upstairs notified the landlord that a glass window belonging to this tenant was smashed. Fortunately, it was just the outer window of a double paned window and nobody broke in.

The landlord testified that the tenant refuses him entry when he gives her 24 hours notice to enter. The landlord has also heard that the tenant may be subletting the rental unit to others as she is no longer living in the city.

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 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*Applications to end a tenancy early are for **very serious breaches only** and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest **committed** the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).*

The landlord's testimony revolved mostly around the tenant's failure to pay her rent which is not an imminent danger to the health, safety or security of the landlord or another tenant.

While the landlord made vague references to complaints he has received from the other tenants in the building, the landlord provided insufficient evidence of the tenant committing a breach serious enough for me to immediately end her tenancy. Though the other occupants of the building may not want the tenant around, I have very little evidence of an imminent threat to their health, safety or security.

In testimony, the landlord did not provide any details of the nature of the complaints made to him, such as dates and times of the incidents. Though he had the opportunity to do so, the landlord did not call any witnesses to provide first person testimony about the incidents that may have led to the other occupants' complaints. While the landlord provided some documentary evidence for this hearing, that evidence was excluded because the landlord did not provide it to the tenant in his Notice of Dispute Resolution Hearing package.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution. In the matter before me, I find the landlord was unable to prove to me that it would be unreasonable to wait for a notice to end tenancy for cause to take effect.

The landlord may have cause to end the tenancy for a variety of reasons set out in section 47 of the Act. I find it would be more reasonable for the landlord to issue a 1 month notice to end tenancy for cause and either wait the full month for the notice to take effect or have the merits of the notice determined by an arbitrator at a hearing.

Consequently, I dismiss the landlord's application seeking to end the tenancy early, without serving a notice to end tenancy for cause.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed without leave to reapply. This tenancy shall continue until it ends 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 11, 2023

Residential Tenancy Branch