



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for an order for early termination of a tenancy, pursuant to section 56.

Both parties attended the hearing. Landlord KW (the landlord) represented landlord NR. The tenant was assisted by advocate DF (the advocate). Witness for the landlord LL also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issue to be Decided

Are the landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained

rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started on November 01, 2018. Monthly rent is \$1,600.00, due on the first day of the month. The landlord collected and currently holds in trust a security deposit of \$800.00. The tenancy agreement was submitted into evidence.

The landlord submitted this application on April 23, 2023 as she is seeking to end the tenancy because the tenant is responsible for a rat infestation in the rental unit. The infestation is causing structural damage to the rental unit.

Both parties agreed the landlord served and the tenant received a one month notice to end tenancy on March 30, 2023 (the Notice). The landlord affirmed that she served the Notice because the tenant is responsible for the rat infestation. The tenant disputed the Notice and a hearing is scheduled for July 10, 2023. The Notice states:

The current situation is urgent: the rats are breeding prolifically and there is ongoing damage to the house, to its wooden structure, attic, pipes and electrical cables. I cannot move forward with the rat extermination until the chickens and chicken coop are gone. I cannot complete the plumbing work until the house has been remediated and sanitized.

I do not trust that the tenant will refrain from animal hoarding and am certain that the same situation will occur again if her tenancy is not ended. The rat infestation has been going on for a couple of years at least. Despite the abundant evidence and noise caused by rats running up and down the pipes from the attic to the basement, the tenant failed to inform me of this situation, knowing that her chicken flock had caused the problem.

The landlord stated that when she served the Notice the tenant was aggressive and showed the middle finger to the landlord.

The tenant testified that she showed the middle finger to the landlord because she asked her to stop taking photographs and the landlord continued taking photographs.

The advocate said that showing the middle finger is a God-given charter enshrined right of Canadians, according to a recent court ruling.

Both parties agreed they have not had other interactions after March 30, 2023.

The landlord submitted into evidence letters issued and photographs taken prior to serving the Notice. The landlord affirmed that she considered the facts related to these documents to serve the Notice.

Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

- (2)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, in the case of a landlord's application,
- (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, 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.

Residential Tenancy Branch Policy Guideline 51 states:

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).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;

- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

I accept the uncontested testimony that the tenant showed the finger to the landlord when she served the Notice.

In R. c. Epstein, 2023 QCCQ 630, the Court of Quebec decided:

To be abundantly clear, it is not a crime to give someone the finger. Flipping the proverbial bird is a God-given, Charter enshrined right that belongs to every red-blooded Canadian. It may not be civil, it may not be polite, it may not be gentlemanly.

I find the tenant had an unfortunate, rude, obscene and inappropriate behaviour by showing her finger to the landlord. However, I find that the tenant's actions are not serious enough to end the tenancy under section 56 of the Act, as I find that it is not unreasonable for the landlord to wait for a one month notice to end tenancy due to the tenant's actions on March 30, 2023.

The landlord served the Notice because she claims the tenant is responsible for a rat infestation. The landlord did not provide testimony about new facts that happened after the landlord served the Notice, other than the tenant's rude behaviour on March 30, 2023. The landlord failed to prove, on a balance of probabilities, why it would be unreasonable for her to wait for the Notice's hearing scheduled for July 10, 2023.

The landlord has failed to provide examples of the tenant's escalating behaviour to support an order of possession under section 56 of the Act. The landlord did not provide testimony about structural damages caused by the rat infestation after March 30, 2023.

Therefore, I dismiss the landlord's application for an early end to the tenancy pursuant to section 56 of the Act.

I am not making findings about the Notice and the facts related to the Notice.

Conclusion

I dismiss the application without leave to reapply. The tenancy continues 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 30, 2023

Residential Tenancy Branch