



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET

Introduction

The Landlord filed an Application for Dispute Resolution on February 15, 2023 seeking an order for an early termination of the tenancy. This is on the basis that 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 June 9, 2023.

In the conference call hearing I explained the process and provided the attending agent for the Landlord the opportunity to ask questions. Neither the Landlord nor the Tenant attended the hearing.

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

The Landlord’s agent in the hearing did not have a record to refer to any service of the notice of this hearing from the Landlord to the Tenant. This is required as per s. 59(3) of the *Act*. The Landlord provided documents as evidence to the Residential Tenancy Branch in advance of the hearing; however, the agent attending did not have these records.

The Landlord provided a record of registered mail, showing a tracking number label. Without the Landlord in attendance, I find this is insufficient evidence to show they completed service of the Notice of Dispute Resolution Proceeding and their complete evidence to the Tenant.

I summarily dismiss the Landlord’s Application, without leave to reapply for this reason.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession that ends the tenancy for cause and without notice by section 56 of the *Act*?

Background and Evidence

In their Application, the Landlord listed the following:

On December 10th 2022 both basements flooded due to heavy rain affecting sewer pump to stop working. We need to end tenancy due to renovations that will take months to fix. I have already tried giving him frustration tenancy notice he returned the letter back to me and will not move. I have spoken to tenancy board and they let me know to file a dispute to end tenancy. I did not take any rent from him for a month now.

The Landlord provided a letter they gave to the Tenant, dated January 16, 2023. The Landlord's agent in the hearing stated they did not have a copy of this letter for reference.

The Landlord's agent made no submissions on the state of the rental unit being "uninhabitable", equating to a frustrated tenancy.

In the hearing, the Landlord's agent referred to other applications in place at the Residential Tenancy Branch, both past and future hearings.

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 . . .

The Landlord did not attend the hearing to present submissions for this Application. The agent who attended on their behalf did not have the Landlord's submitted evidence to refer to.

In effect, there is no submission by the Landlord for this Application. I cannot infer that they served evidence, or Notice of this hearing, to the Tenant who did not attend.

An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, so significant that it would warrant the tenancy end sooner than had the landlord issued a One Month Notice to End Tenancy for Cause. With no evidence or testimony presented for this Application, I cannot conclude that s. 56 of the *Act* applies to the situation in the rental unit.

I find that s. 56 of the *Act* does not apply. The Landlord did not attend to directly speak to this Application.

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: June 9, 2023

Residential Tenancy Branch