



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on July 6, 2023 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlords and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the Tenants confirmed receipt of the Notice of Hearing and the Landlords' evidence on July 8, 2023. I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Tenants confirmed that they did not submit any evidence, however, stated that they needed more time to do so. The Tenants stated that they have been busy with work and unable to gather their evidence in time to serve the Landlords and the Tenancy Branch. The Tenants requested an adjournment to submit their evidence. The Landlords stated that given the nature of the Application and the current situation, the Landlords were not agreeable to an adjournment.

According to the Residential Tenancy Branch Rules of Procedure (the "Rule of Procedure") 7.9, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*

- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

In this case, I find that the Tenants did not provide sufficient reasoning as to why they were unable to submit their evidence in response to the Application in a timely manner. I find that by adjourning the hearing to allow the Tenants more time to submit their evidence would prejudice the Landlords. As both parties were in attendance, the hearing continued, and the Tenants had an opportunity to provide verbal testimony.

Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties confirmed the following: the tenancy began on December 1, 2022. Currently, the Tenants are required to pay rent in the amount of \$2,800.00 which is due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,400.00 and a pet damage deposit in the amount of \$1,000.00, both of which the Landlords continue to hold.

The Landlords have submitted an Application to end the tenancy early based on immediate and severe risk. The Landlords stated they are currently trying to sell the rental unit and that their Realtor is needing to conduct showings. The Landlords stated that the Tenants have been disagreeable with accommodating showings, despite the Landlords offering to work on a mutually agreeable showing schedule with the Tenants. The Landlords stated that they have provided the Tenants with sufficient notice of entry, but the Tenants have been refusing entry, cancelling appointments, and threatening that their dogs would be protecting the rental unit.

The Landlords stated that the Tenants have not been paying rent, not allowing entry to the rental unit, and threatening violence with their dogs. As such, the Landlord believes that the situation is unpredictable and not safe for the Landlords, Relator, and potential buyers. The Landlords also indicated that their financial interests are being impacted.

The Landlords have not yet served the Tenants with a One Month Notice to End Tenancy for Cause.

The Tenants responded by stating that they feel harassed by the Landlords and have not denied entry. The Tenants stated that there were four showings conducted last week alone. The Tenants stated that they are pregnant and have two children and dogs to manage, therefore, not all showings are convenient, which has resulted in some rescheduling and cancellations. The Tenants stated that their dogs are not aggressive, and that access has ever been physically barred from the Landlords or their Relator.

Analysis

Based on the documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy 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*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

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...

- (a) The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlords have applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, The Landlords expressed concerns regarding the Tenants' being disagreeable to showings, causing resistance and threatening that their dogs would protect the rental unit, as well as their failure to pay rent.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act.

In light of the above, I dismiss the Landlords' Application, without leave to reapply. As the Landlords were not successful with their Application, the Landlords are not entitled to recover the filing fee from the Tenants.

The Residential Tenancy Branch Policy Guideline 7 offers some useful information which is applicable to both parties in this situation;

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m. Notices must also be served in accordance with the Act.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one.

Conclusion

The Landlords have provided insufficient evidence to prove that the situation demonstrates immediate and severe risk and that the tenancy should end earlier under section 56. The tenancy will 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: July 17, 2023

Residential Tenancy Branch