



Dispute Resolution Services

Page: 1

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 June 20, 2019 (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
- an order granting the recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on July 15, 2019 as a teleconference hearing. The Landlords, as well as the Landlords' witness, E.E., attended the hearing and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 35 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords, E.E., and I were the only persons who had called into this teleconference.

The Landlords testified the Application and documentary evidence package was served to the Tenants by registered mail. Copies of the Canada Post registered mail receipts were submitted confirming the mailings took place on June 26, 2019. The Landlords also submitted a proof of service document which indicated that the Tenant signed for the mailing confirming receipt on June 29, 2019. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on June 31, 2019, the fifth day after their registered mailings. The Tenants did not submit documentary evidence in response to the Application.

The Landlords were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 Landlords testified that the tenancy began on February 1, 2019. The Landlords stated that the Tenants currently pay rent in the amount of \$1,800.00 to the Landlords, which is due on the first day of each month. The Tenants paid a security deposit in the amount of \$850.00, which the Landlords continue to hold.

The Landlords stated that they received notification from the occupants who live in the basement suite of the residential property on April 14, 2019, that the Tenants who live upstairs have been arguing and fighting regularly. The Landlords stated that they subsequently served the Tenants with a caution notice, as well as a telephone call, however, the Tenants have not yet responded to the Landlords.

The Landlords stated that the downstairs occupants have expressed their concerns regarding the upstairs Tenants smoking marijuana in the house, which they can smell downstairs. The Landlords stated that the downstairs occupants have children and that the noise of the fighting and the smell of smoke have significantly interfered with or unreasonably disturbed them.

Furthermore, the Landlords stated that on June 10, 2019 the downstairs occupants reported another incident of violence between the upstairs Tenants which resulted in Police being contacted. The Landlords made E.E. available as a witness who testified that she is one of the occupants who lives in the basement suite of the residential property. E.E. stated that on June 10, 2019 the female Tenant attended the basement suite asking for help after the Tenants had engaged in an altercation. E.E. stated that

the Police attended and that the male Tenant moved out of the rental unit. The Landlords stated that they changed to locks following the incident for safety concerns.

The Landlords stated that the parties signed a Mutual Agreement to End Tenancy on June 15, 2019, with an effective vacancy date of July 30, 2019. The Landlords stated that the male Tenant continues to attend the rental unit and that they feel as though it would be unreasonable to have to tenancy continue until July 30, 2019 to prevent the Tenants from further interfering and unreasonably disturbing the downstairs occupants.

Analysis

Based on the unchallenged and affirmed 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 that 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 Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, the Landlords indicated that the reason for seeking an order of possession was in relation to ongoing concerns regarding noise, smoking in the rental unit, arguing, and fighting which has resulted in Police involvement. The Landlords' witness E.E. testified that the actions of the Tenants has significantly interfered with or unreasonably disturbed her and her family.

In this case, the Landlords stated they have not served the Tenants with a One Month Notice for Cause, however, they testified that the parties signed a Mutual Agreement to End Tenancy on June 15, 2019, with an effective vacancy date of July 30, 2019.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than the effective vacancy date of July 30, 2019, according to the Mutual Agreement to End Tenancy. I find that the Landlords 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 Landlord's 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.

Conclusion

The Landlords have provided insufficient evidence to prove 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 15, 2019

Residential Tenancy Branch