



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Early Termination of Tenancy and Order for Possession due to the tenant posing an immediate and severe risk to the rental property pursuant to section 56 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord attended at the date and time set for the hearing of this matter. The landlord's daughter also attended the hearing to provide witness testimony pertaining to the service of the Notice of Dispute Resolution Proceeding package on the tenant. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:50 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding for this hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that they had served the tenant with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that she served the Notice package and her evidence by posting on the tenant's rental unit door on October 23, 2019, and submitted into documentary evidence a Proof of Service form (#RTB-9) signed by the landlord's daughter who witnessed the service. Further to this, the landlord's daughter provided her verbal testimony at the hearing regarding the service of the Notice and evidence package.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the third day when it is served by posting on the door.

As such, I find that the tenant was served with the notice of this hearing in accordance with section 89 of the *Act* and deemed to have received the notice of this hearing on October 26, 2019, the third day after posting, in accordance with section 90 of the *Act*.

Preliminary Issue – Landlord's Request to Conclude Hearing Early

At the outset of the hearing, the landlord was agitated by the questions asked by the Arbitrator to confirm details of service of documents and the terms of the tenancy. The landlord explained that she had a court matter to attend and requested that the hearing be conducted as quickly as possible. By 9:50 a.m. the landlord advised she need to attend her court appointment and as such, the hearing ended at that time at the request of the landlord.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession pursuant to section 56 of the *Act*?

Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement, which does not contain the standard terms for a tenancy agreement as set out in the *Act*, was submitted into documentary evidence. The landlord confirmed the following terms of the tenancy:

- This tenancy began in 2017 and has continued as successive fixed-term tenancy agreements with the most recent term with a scheduled end date of June 30, 2019.
- Current monthly rent of \$825.00 is payable on the fifteenth day of the month.

- The tenant paid a security deposit of \$300.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord's Application for Dispute Resolution provided the following reasons for seeking early end to the tenancy pursuant to section 56 of the *Act*:

tenant has threatened to burn down home. physically harmed landlord w/witnesses present. numerous police attendances. peace & safety of all seriously jeopardized repeatedly. tenant has damaged home & continues to. 2 smashed windows. 2 destroyed bedroom doors. fleas. carpet & suite filthy. garbage. lets homeless/junkies stay over & steal. she has stolen from landlord & other tenant. changed lock & refuses access. house can not be secured from harm due windows smashed out. owes 5 months rent.

[Reproduced as written]

The landlord provided the following unchallenged testimony. The landlord served a One Month Notice to End Tenancy for Cause to the tenant on April 1, 2019. The tenant did not dispute the One Month Notice and the tenant agreed to move out on June 30, 2019. The landlord submitted a copy of the One Month Notice into evidence and referred to the one-page sheet that was attached to the Notice setting out the "Details of Cause" for issuing that Notice as the grounds for the current application to end the tenancy early pursuant to section 56 of the *Act*.

Additionally, the landlord testified that the tenant had last paid rent in May 2019 and had failed to pay rent since then. As such, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on July 26, 2019. The landlord stated that the tenant did not dispute the 10 Day Notice. When asked why the landlord had not proceeded to apply to the Residential Tenancy Branch for an order of possession on the basis of the undisputed 10 Day Notice, the landlord explained that she had been busy and did not have the money to pursue the cost of bailiffs at that time. The landlord testified that she had called police to address her complaints that the tenant has threatened her and assaulted her but she stated that the police would not do anything because the landlord has been confrontational with the tenant in seeking to have the tenant move out of the rental unit.

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 of the Act, I need to be satisfied that the tenant or their guest 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.

As outlined above, there are clearly two separate components to section 56 of the Act, both of which need to be met in order for a landlord to obtain an early end to a tenancy. The second component requires that a landlord demonstrate that it would be unreasonable or unfair to wait for consideration of a standard One Month Notice to End Tenancy for Cause to take effect.

In this case, the landlord indicated that she has issued notices to end tenancy to the tenant, including a One Month Notice on April 1, 2019 and a 10 Day Notice on July 26, 2019, both of which were undisputed by the tenant and for which the landlord could have proceeded with an application for an Order of Possession.

In any event, the only matter before me at this hearing was the landlord's application for an early end to tenancy, resting primarily on the fact that the tenant has failed to pay rent for the past five months and caused damage to the rental unit, and incidents involving the tenant dating back to prior to the issuance of the One Month Notice in April 2019. The landlord failed to submit any evidence such as a police report or witness

statements regarding her allegations of being threatened and assaulted by the tenant. The landlord submitted undated photographs of the rental unit, which appeared to be part of a police report, depicting unkempt and cluttered conditions, with a boarded window and damage to a door, but no explanation as to how the damage was extraordinary in nature.

Section 56 of the *Act* is reserved for situations where a tenant's actions have escalated to the extent that the delay involved in issuing a One Month Notice for Cause and waiting for that Notice to take effect would be unreasonable or unfair. This is further explained in Residential Tenancy Policy Guideline #51 Expedited Hearings, as follows:

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.*

In order to end this tenancy early, I find that the landlord would require more evidence of recent incidents involving the tenant to support the grounds for urgency in this matter as the landlord failed to provide any examples of the tenant's escalating behaviour since issuing the One Month Notice in April 2019 or the 10 Day Notice in July 2019. The landlord had the option to pursue an Order of Possession on the basis of both of these undisputed notices, which would have provided the landlord with an Order of

Possession several months ago, yet the landlord failed to exercise due diligence in pursuing these prior notices. As such, I find insufficient evidence that the tenant's behaviour has escalated to the point of rendering it unreasonable or unfair for the landlord to wait for a One Month Notice to take effect.

In summary, although there may be cause to end this tenancy pursuant to sections 46 or 47 of the *Act*, I am not satisfied that the landlord has sufficiently met the burden of proving that it would be unreasonable or unfair to wait for a One Month Notice to End Tenancy to take effect, as is required in order to end a tenancy early pursuant to section 56 of the *Act*.

Therefore, I dismiss the landlord's application for an early end to tenancy pursuant to section 56 of the *Act*. This tenancy continues until ended in accordance with the *Act*.

As the landlord was unsuccessful in her application, she must bear the costs of the filing fee for this application.

Conclusion

I dismiss the landlord's application for an early end to tenancy. This tenancy continues 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: November 05, 2019

Residential Tenancy Branch