



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, ET**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- An early end to tenancy because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord, pursuant to section 56; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlords attended the hearing, represented by their daughter-in-law/agent, IL. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Expedited Hearing and the 30 pages of evidence submitted by the landlord when they filed their application. The landlord acknowledged service of all the tenant's evidence.

The landlord submitted several pieces of evidence days after filing their original application, contrary to Rule 10.2 of the Residential Tenancy Branch rules of procedure which states: *An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution*. I advised the parties that these pieces of evidence would not be considered in this decision as they were not filed in accordance with Rule 10.2.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to show the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit located in a house with 3 separate living units. The landlords live in the upper unit, the tenant lives in the south unit below the landlords' and another unrelated tenant lives in the north unit.

The tenancy began on January 25, 2018, with rent set at \$1,400.00 per month payable on the first day of the month. A security deposit of \$700.00 was collected and a condition inspection report was done at the commencement of the tenancy. The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause some time around February 24, 2022, and a copy of that notice to end tenancy was provided as evidence by the tenant.

On their application for dispute resolution, the reason for seeking the early end to tenancy reads:

- 1) This tenancy is causing great mental distress, anxiety and overall physical concerns.
- 2) Tenant is disrupting our everyday life.

- a. She demands complete silence after 8pm every day. We CANNOT flush toilets, take bath/shower, enter our home office/use desk or printer, open/close drawers in family room (above her kitchen), walk on main floor (kitchen, family room, home office). She will bang on walls, send texts and emails
 - b. continuously questions objects to regular maintenance of property
- 3) Tenant has called the police and made false accusations in the past. We are in constant fear she could do it again. This undue stress is too much for us

The landlords gave the following testimony. The landlord, L.L. ("landlord") has not been feeling well. After serving the tenant with a 1 Month Notice to End Tenancy for Cause, the landlord felt that his health concerns were serious enough that they needed to end the tenancy right away. The landlord suffered a heart attack on April 22nd. The landlord's doctor ordered a few tests and asked the landlord what he had been doing on a specific time and day. According to the landlord's testimony, he was "*dealing with a situation instigated by the tenant*". The landlord did not specify the nature of the "situation" during the hearing.

The landlord's doctor wrote a note that indicates L.L. *is Involved in a stressful situation with his current tenant. He does have a known history of hypertension. His situation has lead to Acute elevations in his blood pressure and has also affected his mental health. His Overall health would benefit from getting the situation resolved sooner rather than later.*

L.L. further testified that he does not blame the tenant for the heart attack. He inherited the condition from his parents. His life is more important than money and that his house should be his haven. He wants the tenant gone because he cannot tolerate the stress.

The landlord A.L. testified that they have been dealing with issues with this tenant since the beginning of the tenancy. The tenant is always complaining about something. The landlords offered the tenant the opportunity to break the lease, but the tenant refused. The landlords are tired of the constant phone calls and advised the tenant that she can only contact them via email or text. The last time they got a text it was 6:30 in the morning, which the landlords feel is unreasonable.

The landlord brought up an incident whereby he alleges he was assaulted by the tenant; however, the landlord could not provide the date of the alleged assault. He does not have any evidence to corroborate the allegation of the assault, other than his own

testimony. Lastly, the landlord complains that he cannot flush the toilet, take a shower after 8:30 or move around his house without the tenant complaining or banging on the walls and doors.

The tenant gave the following testimony. She is confused by the reports about the landlord's health. It has nothing to do with her. As the landlord stated, the heart condition is inherited therefore she shouldn't be blamed for it.

The tenant has not spoken to the landlords in months. How is she supposed to reach out to the landlords if there are concerns about the tenancy? She has always had a good relationship with the landlords, and they have confided health conditions to one another. Everyone has health issues.

Regarding the alleged assault: it was on April 26th. The landlord has security cameras around the house, and if there was an assault, the police would charge her with it. She does not harass the landlords; she never talks to them; they don't answer her calls. All these same allegations are made against her in the landlord's 1 Month Notice to End Tenancy for Cause and today's hearing is an instance of cue jumping in order to get an earlier hearing for the same reasons for ending the tenancy. The file number for the hearing set for tomorrow is recorded on the cover page of this decision.

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.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*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.*

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution. In this instance, the landlord issued a notice to end tenancy for cause and that notice to end tenancy was disputed by the tenant. A hearing has been set for tomorrow.

The landlord L.L. testified that he does not blame the tenant for his heart attack, just that the stress of having her there exacerbates his heart condition. I find myself in agreement with the landlord's assessment that he cannot attribute his heart condition to the tenant. As the landlord states, he inherited that condition from his parents. Consequently, I cannot correlate the landlord's health condition directly to the actions of the tenant. I find L.L.'s doctor's note similarly vague in attributing the landlord's hypertension to the tenant. It is altogether possible that there are other contributing factors to the landlord's condition. I do not find there is an imminent danger to the safety of the landlord or any other occupant in the residential property caused directly by the tenant. I find the allegation of a breach of the Act for seriously jeopardized the health or safety or a lawful right or interests of the landlord has not been satisfied.

Second, as previously stated, the landlord must provide sufficient supporting evidence of a breach of the Act, tenancy agreement or regulations to be granted an early end to tenancy pursuant to section 56. I was given absolutely no details regarding a "*situation instigated by the tenant*". If the landlord wanted to attribute a health condition to the tenant, the landlord must provide me with information regarding this "*situation*". The alleged "*assault*" briefly mentioned by the landlord was not corroborated with any details or any evidence other than the landlord's own testimony. Conversely, the tenant denied there was an assault and points out that the landlord has no evidence to support it, such as videos or a police report.

I find that the landlord has provided insufficient evidence to satisfy me the tenant committed a breach of the Act, regulations or tenancy agreement serious enough to justify ending the tenancy early under section 56 of the Act. I do not find there is an

immediate or severe risk to the landlord, other occupants of the building or to the rental unit. While the conduct of the tenant may be disturbing to the landlord, I am not convinced the tenant's tenancy should end early because of the disturbance. I find that the Landlord has fallen short of the standard required to obtain an early end of tenancy under section 56 of the Act. The landlord's application is therefore dismissed without leave to reapply.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord's application for an early end to tenancy pursuant to section 56 of the *Act* is dismissed.

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: June 09, 2022

Residential Tenancy Branch