



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord December 12, 2022 (the “Application”). The Landlord applied for an order ending the tenancy early pursuant to section 56 of the *Residential Tenancy Act* (the “Act”).

The Co-landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Co-landlord. I told the Co-landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Co-landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence. The Co-landlord testified that the hearing package and Landlord’s evidence were posted to the door of the rental unit December 21, 2022. The Landlord submitted a Proof of Service confirming service.

Based on the undisputed testimony of the Co-landlord and Proof of Service, I find the Tenant was served with the hearing package and Landlord’s evidence in accordance with sections 88(g) and 89(2)(d) of the *Act* on December 21, 2022. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the hearing package and evidence December 24, 2022. The hearing package was sent to the Landlord December 16, 2022, and therefore the Landlord did not comply with rule 10.3 of the Rules in relation to the timing of service. However, the Tenant is deemed to have received the hearing package and evidence 19 days before the hearing and I find this sufficient for the Tenant to have prepared for, and appeared at, the hearing.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Co-landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started May 28, 2022.

The Co-landlord testified as follows.

The upstairs tenants are a family of five. The Tenant is the downstairs tenant. The Tenant has a lot of parties and makes a lot of noise. The Tenant has people coming to the property that are doing drugs on the property.

There was an incident between the upstairs tenants and Tenant where the upstairs tenants heard a loud bang late at night and words were exchanged between the upstairs tenants and Tenant. The Tenant was rude and the upstairs tenants called the police. Police attended and found a bag of drugs, including cocaine, and pipes in the yard, which is a common area between the upstairs tenants and Tenant. Police also found multiple needles in the yard. The Tenant was using drugs at the time. Police gave the Tenant a serious warning.

The Tenant has people over that show up with bikes and random items that are left in the yard.

An incident occurred where the upstairs tenants came home to their unit filled with smoke, which there is an email in evidence about. The upstairs tenants have noticed that their unit fills up with smoke every night around 10:00 p.m. from the Tenant downstairs. The upstairs tenants have had to purchase a commercial grade fan to get the smoke out of their unit.

The electricity usage of the Tenant has gone from \$65.00 per month to \$500.00 per month which is abnormal and of concern.

The Tenant and their guests are fighting at 2:00 and 3:00 in the morning.

The Tenant's behaviour has affected the upstairs tenants. The upstairs tenants no longer let their kids out into common areas such as the yard. The upstairs tenants are scared to answer the door. The upstairs tenants feel scared for their lives and are very upset about the situation. One of the upstairs tenants has started working only part time so they can be home due to their kids and the issues with the Tenant.

The Co-landlord has tried to address the situation with the Tenant; however, the Tenant has not made any changes to their behaviour.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause issued pursuant to section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the circumstances as set out by the Co-landlord because they are undisputed and supported in part by an email in evidence from the upstairs tenants. I find the Tenant has significantly interfered with and unreasonably disturbed the upstairs tenants by having parties, making a lot of noise, having people on the property that are using drugs, causing police to be called, leaving bags of drugs and pipes as well as needles in the yard shared with the upstairs tenants, having people leaving random items in the yard, causing the upstairs unit to be filled with smoke daily and fighting at 2:00 and 3:00 in the morning.

I accept that it would be unreasonable and unfair to require the Landlord to wait for a One Month Notice to End Tenancy for Cause issued pursuant to section 47 of the *Act* to take effect because I find the circumstances as they relate to drugs serious given the upstairs tenants have kids that should be able to use the yard without coming across drugs, pipes and needles. Further, I find it serious that the Tenant is having people over that are using drugs on the property when there are kids living in the upstairs unit. Lastly, I find the circumstances serious because police have had to attend the rental unit due to an incident between the upstairs tenants and Tenant.

I am satisfied the Landlord has met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit effective two days after service on the Tenant.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 12, 2023

Residential Tenancy Branch