



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

The hearing dealt with the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* (the "Act"), for an early termination of the tenancy, an Order of Possession and recovery of the filing fee for their Application.

One of the Landlords, J.B., attended the hearing. Although the telephone line was left open until 1:32 P.M. to enable the Tenant to connect with this teleconference hearing scheduled for 1:00 P.M., the Tenant did not attend. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding.

The attending party provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, to call witnesses and to make submissions.

J.B. confirmed they served the Tenant with the Notice of Dispute Resolution and their evidence (the "Materials") by attaching them to the door of the rental property on March 24, 2023. A witness was present when the Materials were served and a completed and signed Proof of Service Notice of Expedited Hearing Dispute Resolution Proceeding form was entered into evidence by the Landlords.

I find that the Landlord's Materials were served in accordance with section 89 of the Act.

Issues to be Decided

1. Are the Landlords entitled to an order ending the tenancy early?
2. Are the Landlords entitled to an Order of Possession?
3. Are the Landlords entitled to recover the filing fee for the Application from the Tenant?

Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

J.B. testified that the tenancy started on July 21, 2021 and that rent is \$2,350.00 per month due on the 20th day of the month. A security deposit of \$1,200.00 was paid by the Tenant which is still held by the Landlords. A copy of the written tenancy agreement was entered into evidence by the Landlords.

J.B. stated they believe the Tenant may not currently occupy the rental unit. Though the Tenant said to the Landlords they go back to the rental unit at times, the person in the neighbouring property to the rental unit told the Landlord they have not seen the Tenant for a while. The Landlords do not have a key to access the rental unit to confirm if the Tenant still resides there.

J.B. testified that rent had not been paid by the Tenant for the last three or four months and they did not want to wait another five or six months to get something “approved” from the Residential Tenancy Branch.

J.B. stated that there was water on the windows of the rental unit and referred me to photographs submitted into evidence by the Landlords. The photographs show what appears to be condensation on the inside of windows. J.B. stated they believe this was caused by a pool of water on the ground and by the lack of running air in the rental unit.

J.B. testified that during a robbery at the rental unit damage had been done to the electricity circuitry and that BC Hydro had to attend the rental unit to fix it. J.B. explained that the Tenant had posted on social media that they were in another city and had also previously posted about having expensive electronic items in the property. Later, a

robbery took place at the rental unit where the Tenant's belongings were taken. J.B. confirmed they had no evidence of any damage to the property that may have taken place during the robbery.

J.B. voiced concerns regarding possible use of narcotics at the rental unit and a possible "grow-op" but said they did not have any evidence of this.

J.B. stated that the property is "probably rotting" and that there may be damage to the foundations.

Analysis

The Landlords request an early end of the tenancy under section 56 of the Act. A landlord may end a tenancy early under this section where a tenant or a person permitted on the residential property by the tenant:

- 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 interest 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, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property.

The grounds as set out above are echoed in section 47 of the Act which confirms how a landlord may end a tenancy for cause. The key difference between the two sections is that under section 56 a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for the effective date of a one month notice to end tenancy for cause to take effect.

Early end of tenancy is an expedited and uncommon method of ending a tenancy and as confirmed by policy guideline 51, the onus is on the landlord to provide sufficient

evidence to prove that on the balance of probabilities, the tenant committed the serious breach.

The director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property to wait for a notice to end the tenancy for cause to take effect. Without sufficient evidence the application will be dismissed. Examples of breaches referred to in the policy guideline 51 include violent acts committed by a tenant.

In this case, the Landlords put forward multiple reasons as to why they seek an early end to tenancy. One reason is related purely to non-payment of rent which is not a reason provided for in section 56 of the Act so I am unable to consider this as a valid reason for an early end to tenancy.

J.B. made references to illegal activity taking place at the rental unit, namely use of narcotics and “grow-ops”. However, no evidence was put forward to substantiate any of the allegations. As a result, I find that the Landlords have not proven, on the balance of probabilities, that the Tenant engaged in illegal activity as set out in section 56(2)(iv).

J.B. also stated there was water damage within the rental unit but based on the evidence submitted and the vague testimony provided in the hearing, I do not find there is sufficient proof that the breach referenced in section 56(2)(v) of the Act, namely that the tenant had caused extraordinary damage to the residential property, has occurred in this case.

I accept that damage occurred to the electrical circuit at the rental unit, however I do not find this was caused by the Tenant. The testimony of J.B. confirms this was caused by the perpetrator of a robbery at the rental unit.

Based on the above, I find that the Landlords have failed to prove on the balance of probabilities that the Tenant committed any of the breaches set out in section 56 of the Act. Therefore, I dismiss the Landlords’ Application without leave to reapply and the tenancy continues.

As the Landlords were not successful in their Application they must bear the cost of the filing fee.

Conclusion

The Application 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 Act.

Dated: April 11, 2023

Residential Tenancy Branch