



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

On February 23, 2023, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, with F.W. attending as a co-owner of the property. Tenant N.S. attended the hearing and advised that this was her legal name; however, the Landlord wanted to amend this Tenant’s name on the Application to reflect the name that was on the tenancy agreement. As such, the Style of Cause on the first page of this Decision has been amended to reflect this request.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Landlord advised that a separate Notice of Hearing and evidence package was served to each Tenant by attaching them to the door on March 18, 2023. The Tenant confirmed that the Notice of Hearing packages were received; however, she indicated that there was no evidence included in these packages. The Landlord testified that the

evidence was in these packages and that he had a written witness statement that could corroborate this testimony; however, he did not submit this witness statement as proof of service, and he could not find it within the documents he had before him.

I find it important to note that records indicate that a voicemail was left by the Residential Tenancy Branch for the Landlord on March 30, 2023, regarding his request for substituted service by email, and this message stated to the Landlord that “If you choose to serve by email the Arbitrator may address service at the hearing and make a decision on if evidence will be used.” This would indicate to me that the Landlord likely did not serve his evidence in these packages, and then attempted to seek permission to try and serve it in another manner. Given this note, and the fact that he could not find his alleged witness statement as proof of service, I am doubtful that his evidence was included in these packages. As such, I have excluded this evidence and will not consider it when rendering this Decision.

The Tenant confirmed that they did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 15, 2022, that the rent was established at \$2,700.00 per month, and that it was due on the fifteenth day of each month. As well, a security deposit of \$1,350.00 was also paid.

Prior to having the Landlord make submissions on why this Application was made, he was informed that an Application for an early end of tenancy is an expedited hearing which is reserved for addressing the most serious and egregious circumstances, and that the threshold for proving these claims is extremely high. As such, he was advised only to make submissions that would meet this threshold, and issues like non-payment of rent would not be relevant in this type of hearing.

When the Landlord commenced making his submissions regarding this Application, he immediately brought up the issue of non-payment of rent, and he was then reminded that this was not the forum to address non-payment of rent issues. The Landlord proceeded to struggle with raising allegations that would have been pertinent in this type of Application, as he brought up a host of random issues (for example, profane and hurtful text messages) that may have been significant from his perspective; however, these were matters that would be relevant to a One Month Notice to End Tenancy for Cause or a 10 Day Notice to End Tenancy for Unpaid Rent.

F.W. made submissions along similar veins, and these were mostly related to non-payment of rent as well. As this matter kept being raised, this was addressed briefly so as not to waste any more hearing time on an irrelevant issue. However, they were provided with information regarding how to address non-payment of rent. As well, they were provided with the contact of an advocate for Landlords, as it was clear that they were having difficulties understanding how to manage their rights and responsibilities as Landlords under the *Act*.

Regardless, the Landlord was provided with multiple opportunities to testify to specific actions or behaviours that the Tenants were engaging in to justify this type of Application. Amongst the many different issues that were brought up, the following were the only ones that would possibly fall under the grounds for this type of Application.

He advised that the Tenants had a number of other occupants residing, and doing drugs, in the rental unit. He testified that he discovered this when he went to the rental unit unannounced on January 31, 2023. When he realized this, he stated that he informed Tenant K.F. that he was no longer welcome in the rental unit. The Landlord

was cautioned that he could not physically restrict either of the Tenants from residing on the property without first obtaining a Writ of Possession.

Regardless, he also stated that there was equipment left in an area of the rental unit that only K.F. had a key to, and that this equipment was stolen by either the Tenants or their occupants. He testified that an electrician confirmed this theft, and that he received a text message from K.F. corroborating this as well. He stated that he contacted the police regarding this matter; however, an investigation was not initiated. He also made reference to some sort of arrangement where the Tenants would renovate the rental unit, but this was not completed properly, so they had to be redone.

The Tenant advised that all of these allegations pertain to activities that are happening at a different address, and that none of them occurred at the rental unit.

The Landlord was questioned about the Tenant's testimony, and was hesitant to acknowledge the validity of the Tenant's statements. However, when probed, he confirmed that there was no theft of equipment at the rental unit, nor was there any drug activity there.

The Tenant then advised that the Landlord had appeared unannounced at the rental unit on March 8, 2023, that he was intoxicated, and that he was screaming "just hit me" to K.F. She testified that as he was intoxicated, that he drove away from the rental unit in this state, and that he threatened K.F., they called the police, who spent three hours attempting to locate the Landlord. She also stated that the Landlord had a hearing two weeks ago regarding the same allegations that he is bringing forth today, and that the Landlord's Application was subsequently dismissed.

The Landlord then acknowledged that he filed the same Application as this one last month, for the exact same issues that he was advancing, and that his previous Application was dismissed on or around March 13, 2023 (the relevant file number is noted on the first page of this Decision).

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants, or a person permitted on the residential property by the Tenants, have 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.

When reviewing the totality of the evidence before me, I note that it is the Landlord's position that the Tenants, and/or guests of theirs, have been involved in a number of incidents on the property that would justify an early end to this tenancy. I also find it important to note that the threshold for granting an Order of Possession on this type of Application is extremely high, and is generally reserved for the most serious of circumstances such as: violence, death threats, extraordinary damage to the rental unit, just to name a few. While I note that I have the testimony from the Landlord regarding some alleged incidents that might meet this threshold, I do not find that there is any documentary evidence to support the extent of what has been alleged.

Furthermore, and more consequential, is that the Landlord falsely attempted to portray these allegations as happening in the rental unit, and it was only until the Tenant advised that these were happening elsewhere did the Landlord confirm that his allegations were untrue. I find that this type of fraudulent testimony from the Landlord causes me to question his credibility and reliability entirely, and as a result, I do not find any of his submissions to carry any weight as it is now unclear what, if anything, the

Landlord has been truthful about. Moreover, given that the Landlord had a hearing weeks ago regarding these same matters, and given that those matters were already dismissed without leave to reapply, I reject the validity of this Application in its entirety.

As the Landlord was not successful in this claim, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Landlord's Application without leave to reapply.

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: April 3, 2023

Residential Tenancy Branch