



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with an application by the Landlord to end the tenancy early and to recover the filing fee.

Both parties appeared at the hearing. The Landlord also called a witness, F.D. The hearing process was explained and the participants were asked if they had any questions. All participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the tenancy be ended early under section 56 of the Act?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord has applied to end the tenancy early. The Landlord's evidence regarding the reasons for ending the tenancy early was as follows. The Landlord alleged that he had discussions with the Tenants on February 22, 2015 about ending the tenancy as he wished to move back into his home. He said that he had already drafted a 2 Month Notice to End Tenancy for Landlord's Use of Property on February 22, 2015 (the "Notice") with the assistance of his friend F.D. but that he did not serve them during this discussion. He said that after the February 22nd discussion the Tenants were avoiding his phone calls and not returning his messages. As he was concerned about serving

them by the end of the month, he attended the rental unit on the 28th of February and waited until they got home to serve them. He said that when he attempted to serve K.H. she threw the Notice on the ground. He then tried to give the Notice to D.H. who also threw the Notice on the ground. He said that the Tenants then attempted to drive out of the driveway at which time he then stood in front of the Tenants vehicle. He then kneeled down and alleges that the Tenant, G.H., came out of the vehicle, kicked the Landlord in the side and "removed him from the road" by dragging him along the ground. The Landlord called the police and was assisted by two witnesses who also gave statements to the police.

The Landlord stated that he is 81 years old and G.H. is a young man. He said that he did not believe that G.H. had been charged with assault, and that the police would not get involved as they believed it was a "landlord/tenant dispute". He said that he didn't want to "press charges" and that all he wanted was to have his house back. The Landlord stated that he just wanted his house back by April 30, 2015, which is the effective date of the Notice. On another occasion during his testimony he stated that the end of April was "satisfactory" as all he wanted was to have his house back.

Finally, the Landlord stated that he is also concerned about some of his possessions in the rental unit as it was rented semi-furnished. He wanted to have a friend attend with him before the Tenants moved out so that he could ensure his possessions remained and document what items were in the rental unit.

The Landlord's witness, F.D., testified that he drafted the Notice for the Landlord on February 22, 2015. He also testified that he was at the meeting with the Landlord and the Tenants on that same date. He confirmed that the Landlord told the Tenants he wanted his property back, and that the Tenants were also looking at putting an offer on a property the coming week. He said that the Landlord was aware that if the Tenants gave their notice first, that he would not have to give them their one month free [presumably in reference to sections 49 and 51 of the *Residential Tenancy Act*). F.D. further testified that the Landlord was waiting for the Tenants to give their notice and that F.D. warned the Landlord that if he wanted his property back by the effective date that he had to serve them by the end of February. He said that the discussion on February 22, 2015 was friendly and that he had no reason to believe that either party was at risk.

F.D. stated that he had several conversations with the Landlord between February 22 and 28 and that the Landlord told him that he was waiting for the Tenants to give their notice. According to F.D. the Landlord also told him that he believed the Tenants were avoiding him.

F.D. stated that he was not present on the 28th when the alleged assault occurred, but that the Landlord told him what had happened on the 29th, and that he and his wife assisted the Landlord in preparing the statement which was provided in evidence by the Landlord.

F.D. testified that he believed both parties were at fault, and that they were making unfortunate allegations about the other.

The Tenants testified that they did in fact have a conversation with the Landlord on February 22, 2015 at which time the Landlord told them he wished to end the tenancy. The Tenants confirmed that they were also trying to purchase a townhouse and hoped to find a mutually agreeable date to end the tenancy. They stated that they did not agree on a date but suggested May or June as an appropriate time to move.

The Tenants denied receiving any phone calls or messages from the Landlord and stated that they were not avoiding him, or avoiding service of the Notice. D.H. testified that the Landlord did not try to serve them on February 28th nor did the Landlord try to hand either of them the Notice. D.H. stated that he was never provided with a copy of the Notice and was unaware, until the hearing, the effective date. Further, D.H. stated that when they returned home on February 28th, the Landlord came out of their rental unit (which is the upstairs of the rental home). D.H. said that the Landlord was very agitated and yelling at the Tenants and told them that they were avoiding him and that they were supposed to give him notice.

D.H. further stated that the Landlord laid down in front of the vehicle, and then got up and started swinging at D.H. and grabbing at him. D.H. said that he did restrain the Landlord but that he did so only to stop the Landlord from hitting him. D.H. stated that the Landlord then began running out to the street screaming. D.H. further testified that he got back in the vehicle and told K.H. to drive away as he was concerned about the Landlord's erratic behaviour and they wanted to "escape the situation".

D.H. confirmed that he was not charged by the police and that the information he received from the police confirmed his belief that it was the Landlord who was behaving erratically.

K.H. did not testify and no other persons witnessed the events on February 28, 2015. Neither party submitted the police report.

Analysis

Under section 56 of the Act, the tenancy may only be ended early if the Landlord provides sufficient evidence that the Tenants have

1. significantly interfered with the Landlord or another occupant of the residential property;
2. seriously jeopardized the health or safety or 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
 - a. has damaged or is likely to damage the Landlord's property,
 - b. has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
 - c. has jeopardized a lawful right of another occupant or the Landlord; or
5. caused extraordinary damage to the residential property

and it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect (emphasis added)

In this case, the evidence from both sides shows that this is clearly a problematic tenancy. However, I find that the Landlord has only provided allegations of the Tenants' misconduct, most of which were unsupported by reliable evidence and which were disputed by the Tenants. The Landlord's own witness conceded that both parties acted inappropriately. Further, the Landlord stated that he simply wanted his

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord bears the burden of proof and I find that the Landlord has not provided sufficient, clear evidence to establish adequate cause to end the tenancy under section 56. Consequently, the Landlord's application is dismissed.

As the Landlord's application was unsuccessful, he is not entitled to recovery of his filing fee for the cost of his application.

Conclusion

The Landlord's application is dismissed, with the effect that the 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: March 26, 2015

Residential Tenancy Branch

