



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTERLY ACRES FARMS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to this tenancy and an Order of Possession, pursuant to section 56;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 26 minutes. Landlord AW ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he was the property manager for this rental unit and that he had authority to speak on behalf of the landlord company named in this application as an agent at this hearing (collectively "landlords").

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Application") on September 2, 2016, by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' Application on September 7, 2016, five days after its registered mailing.

At the outset of the hearing, I advised the landlord that I could not consider the landlords' written evidence, which he said he submitted to the tenant on October 5, 2016, by way of regular mail. I received the written evidence by way of facsimile on October 5, 2016. Rule 3.2 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* requires the landlord to serve all written evidence to the tenant and the RTB by the next day after filing the Application online. The landlords' Application was first filed on August 25, 2016 and updated on August 29, 2016. The written evidence dated back to January and April 2016, which the landlord said he received at the end of September 2016. However, I find that the landlord could have made efforts to obtain the written evidence earlier and failed to do so.

Issues to be Decided

Are the landlords entitled to end this tenancy early and to obtain an Order of Possession?

Are the landlords entitled to recover the filing fee for this Application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on December 15, 2015. Monthly rent in the amount of \$700.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit. The rental unit is a self-contained basement suite with two bedrooms, a kitchen and a living room. The tenant's kitchen and living room are not shared common areas with other tenants. The rental unit is in a house. Another tenant, an employee of the landlord company, resides in another self-contained basement suite next door to the tenant ("basement tenant"). Another two tenants live on the main floor of the same house ("upstairs tenants").

The landlord seeks an early end to this tenancy because he says the tenant has a "known criminal at the unit." He stated that this person is likely the tenant's boyfriend and that he has seen the person enter the rental unit (hereinafter "tenant's boyfriend"). He said that the tenant's boyfriend is not on the tenancy agreement and is not a tenant in this unit. He testified that the tenant keeps her blinds closed most of the time and it is hard to tell when the tenant's boyfriend comes over and how often he is there. He confirmed that the police told him that the tenant's boyfriend was a criminal, not to rent the unit to him, and to call the police if he shows up at the unit because he is not a tenant. The landlord maintained that he has called the police one time and given him the tenant's boyfriend's license plate but by the time the police arrived, he had left the unit. He said that since the landlord's Application in August 2016, the tenant's boyfriend has broken the tenant's car windshield twice and stolen a truck. He explained that the upstairs tenants were witnesses to the windshield smashing but they were unavailable to testify at this hearing.

The landlord stated that the basement and upstairs tenants have complained of noise, yelling and arguments between the tenant and her boyfriend. He said that the tenant previously asked him to change the door code to prevent her boyfriend from entering the rental unit. He complained that the tenant's boyfriend has been convicted of multiple offences and was on probation.

The landlord said that he did not issue a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenant because he thought that he would get a quicker hearing date if he applied for an early end to tenancy. He also said that he has issued multiple notices to end tenancy to other tenants before, and that some of the notices were nullified at RTB hearings because they were served at the same time as other notices.

Analysis

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

Section 56 of the *Act* requires the landlords to show, on a balance of probabilities, that the tenancy must end earlier than the 30 days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **and** that it would be unreasonable or unfair for the landlords or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b). The landlords did not state what specific part of section 56(2) of the *Act* that they were applying under.

To satisfy section 56(2)(a) of the *Act*, the landlords must show, on a balance of probabilities, that:

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) 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

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property...

On a balance of probabilities and for the reasons stated below, I find that the landlords' Application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlords did not provide sufficient evidence that they could not wait for a 1 Month Notice to take effect. The landlord said that he did not issue a 1 Month Notice because of prior issues with other notices to end tenancy, which is not a sufficient reason in this case. I find that the landlords failed to provide sufficient evidence that it was the tenant's boyfriend that smashed car windshields and stole a truck. The supposed witnesses did not testify at this hearing and the alleged offences were purportedly against the tenant's car, not against the landlords or other occupants. The landlords have only provided the license plate of the tenant's boyfriend's car to the police once but there was no outcome after that occurrence. I find that yelling and arguing, which can occur between people during tenancies, are not sufficient reasons for ending this tenancy early.

I am not satisfied that the landlords have met their onus to end this tenancy early and that it would be "unreasonable" or "unfair," as per section 56(2)(b) of the *Act*, for the landlords to issue a 1 Month Notice and allow it to take effect.

Accordingly, I dismiss the landlords' Application for an early end to this tenancy and an Order of Possession.

As the landlords were unsuccessful in this Application, I find that they are not entitled to recover the \$100.00 filing fee.

Conclusion

The landlords' entire application is dismissed 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: October 12, 2016

Residential Tenancy Branch