



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 the hearing, which lasted approximately 29 minutes. The two landlords, male and female, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Application") on October 14, 2016, by way of posting to his bedroom door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' Application on October 17, 2016, three days after its posting.

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 landlords testified that this month-to-month tenancy began on October 24, 2012. Monthly rent in the amount of \$500.00 is payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit, which is a room on the main floor of a house. Two other occupants live in the other two bedrooms on the main

floor of the house and share the common bathroom, kitchen, living room and laundry area with the tenant.

The landlords seek an early end to this tenancy because the tenant and his friend physically and verbally assaulted the male landlord. The landlords claimed that they served a 2 Month Notice to End Tenancy for Landlords' Use of Property, dated September 20, 2016, with an effective move-out date of December 1, 2016 ("2 Month Notice"), to the tenant on September 20, 2016 by posting to his bedroom door. They maintained that the tenant was upset about this notice and retaliated against the male landlord.

The male landlord testified that the tenant was drunk, was being verbally abusive and "shoved" the male landlord during an incident on September 26, 2016. He explained that he "knocked" the tenant out by punching him so the tenant fell to the ground and was unconscious. He stated that he punched the tenant in self-defence before the tenant could punch him first. He said that the tenant called the police and tried to get the male landlord charged with assault but the police told the tenant that he was "lucky" that the male landlord "didn't finish the job."

The male landlord said that on September 30, 2016, he was removing a van from the rental property and another occupant of the rental unit, "R," as well as the tenant's friend, "CM," were drunk and verbally abused him. He said that CM shoved him so the male landlord "knocked" this person out by punching him and causing him to fall to the ground where he was unconscious for about "twenty seconds." He stated that he punched CM in self-defence before he could punch the male landlord first. He said that CM told him that he was there in retaliation for the above incident on September 26, 2016, involving the tenant. The female landlord provided a statement about this incident, stating that R and CM were attempting to block the male landlord from moving the van and the male landlord was "stopped" from "stomping on the drunken friend's [CM's] head." The statement also notes that R tried to pull the male landlord out of the van to which the male landlord "slammed [R's] arm in the door." The male landlord said that the police were called by CM and no charges were laid because the male landlord was outnumbered. The landlords said that the police recommended that they seek an emergency eviction of the tenant and that it was not safe for them to be at the rental unit with the tenant, after this incident.

The landlords said that the tenant has been a problem during this entire tenancy. They stated that the police have attended at the rental unit 12 to 15 times per month and that it is "probably" due to the tenant. They explained that they are facing a nuisance claim

from the police from the amount of reports from this rental unit. They claimed that the rental property is unsafe for them to visit in order to complete required maintenance.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlords, 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)(a) **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).

To satisfy section 56(2)(a) of the *Act*, the landlords must show, on a balance of probabilities, the following reasons. I assume the landlords have applied under the following reasons, although they did not identify their specific reasons during the hearing:

- (a) the tenant or a person permitted on the residential property by the tenant has:*
 - (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.*

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*. The landlords' 2 Month Notice is to take effect on December 1, 2016, less than a month from this hearing date on November 4, 2016. The landlords did not issue a 1 Month Notice to End Tenancy for Cause to the tenant. I find that the landlords did not provide sufficient evidence that they could not wait 30 days for a notice to end tenancy to take effect against the tenant.

The above two incidents occurred on September 26 and 30, 2016. Yet, the landlords filed their application on October 14, 2016, weeks later, despite the fact that they said the police recommended for them to apply for an emergency eviction against the tenant. There have been no other specific incidents involving the tenant since September 30, 2016, that the landlords could identify during the hearing.

Based on his own testimony, the male landlord was the person who assaulted the tenant and CM by knocking them unconscious and forcing the two to call the police on

two separate occasions. The two incidents between the male landlord, the tenant and the tenant's friend CM were not serious enough for the police to file criminal charges against anyone. The landlords stated that they did not provide a video of the second incident because it was "too short" and only "a couple seconds," and it only showed someone swearing at the male landlord. The landlords provided still photographs from the video which only show two people standing outside of a van.

The landlords did not provide any police reports or witness statements for this hearing. The landlords maintained that the police attend at the rental unit 12 to 15 times per month; yet, they did not obtain any police reports because they said it takes 6 weeks to get them. Despite the fact that the landlords said that the other occupants in the same house as the tenant have complained about him and police incidents, none of these occupants showed up to testify at this hearing.

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 wait 30 days for a notice to end tenancy 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 from the tenant.

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: November 04, 2016

Residential Tenancy Branch