



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an order ending the tenancy early pursuant to section 56 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Landlord, the agent for the Landlord (the “Agent”), and both Tenants, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

At the outset of the hearing the Agent identified that the Landlord had not received any documentary evidence from the Tenants in relation to this hearing. Although the Tenants provided reasons for why the Landlord was not served with their documentary evidence, ultimately they acknowledged that it was never provided to the Landlord.

The ability to know the case against you is fundamental to the dispute resolution process and the Rules of Procedure clearly outline how and when evidence must be served on the other party in advance of the hearing. As the Tenants acknowledged that their documentary evidence was never served on the Landlord, I find that it would be prejudicial to the Landlord and a breach of natural justice and the Rules of Procedure to

accept their evidence for consideration. As a result, I have excluded the Tenants documentary evidence from consideration in this matter.

Issue(s) to be Decided

Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

The Landlord sought an order ending the tenancy early. On behalf of the Landlord, the Agent testified that the Tenants have significantly interfered with or unreasonably disturbed another occupant of the residential property, seriously jeopardized the health or safety or the lawful right or interest of the Landlord or another occupant, caused extraordinary damage, and put the Landlord's property at significant risk.

The Agent testified that the Tenants have caused extraordinary damage to the rental unit, however, neither the Agent nor the Landlord submitted documentary evidence showing this damage or establishing that it was caused by the Tenants. The Tenant's denied this allegation. The Agent testified that the Tenants have put the Landlord's property at significant risk and jeopardized the Landlord's lawful right or interest by refusing to allow an electrician onto the property to complete electrical repairs recommended by the fire department and for tampering with farm equipment and resources. In support of this testimony the Landlord provided an affidavit from the electrician stating he was denied access to the property by the Tenants. The Tenants denied refusing access to the electrician and stated that in any event, the Landlord never requested that they provide access to an electrician or gave them written notice to enter the property for this purpose. When asked, the Agent testified that only one attempt was ever made to enter the premises with an electrician and confirmed that written notice of this request for entry was never provided to the Tenants.

The Tenants denied the allegations that they have tampered with farm equipment or resources and when asked, the Agent acknowledged that no one has witnessed the Tenants tampering with anything or found any evidence of tampering. The Agent testified that the Tenants have significantly interfered with or unreasonably disturbed the Landlord and the other occupant of the property by making repeated, false, and malicious calls to the police and the fire department resulting in the need for both agencies to frequently attend the property for investigation and questioning. The Landlord provided an affidavit from the other occupant of the property regarding these

disturbances. The Tenants acknowledged making these calls but testified that they are justified due to harassment from the Landlord's son, unauthorized entry into their rental unit by the Landlord or her agents, and concerns regarding fire safety due to electrical issues and deficiencies in the rental unit.

The Agent testified that it would be unreasonable or unfair to the Landlord or other occupants of the residential property to wait for a notice to end tenancy under section 47 to take effect due to the safety risk to the Landlord and farm employees from the Tenants' suspected tampering or farm equipment and resources, the fire risk to the property as the Tenants have refused access to an electrician, and the safety risk posed to the Landlord, the other occupant and the property itself from the Tenants who the Landlord alleges have threatened to burn the property down and run the Landlord over with a car. In support of the position that the Tenants pose a safety risk, the Landlord provided affidavits from another occupant of the property and a process server regarding interactions with the Tenants.

The Agent testified that she called the police on behalf of the Landlord in relation to these threats but was advised by the police that this is a residential tenancy matter. The Tenants denied having ever made these threats and testified that it is the Landlord and her son who have repeatedly threaten them.

The Agent also testified that the Landlord has served on the Tenants a One Month Notice to End Tenancy for Cause (the "One Month Notice") in relation to the above noted allegations as well and a 10 Day Notice to End Tenancy for Unpaid Rent or utilities (the "10 Day Notice"). The Tenants testified they have disputed the notices and both parties agreed that a hearing in relation to these notices is set for April 19, 2018, with the Residential Tenancy Branch (the "Branch")

Analysis

The Landlord sought to end the tenancy early pursuant to section 56 of the *Act* which, in specific circumstances, permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*.

Section 56 of the *Act* states the following with regards to the circumstances in which a Landlord may end a tenancy early:

Application for order ending tenancy early

- 56** (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
- (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, and
 - (b) it would be unreasonable, or unfair to the landlord 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.

Rule #6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that the Landlord must establish, on a balance of probabilities, that they not only have cause to end the tenancy on one or more of the grounds set out under section 56(2)(a) of the *Act* but also that it would be unreasonable or unfair to the Landlord or other occupants of the residential property to wait for a notice to end tenancy under section 47 to take effect.

The parties provided opposing testimony regarding who has uttered threats and the evidence before me establishes that the police have been called in relation to this

tenancy by both parties. Although the Landlord provided affidavits from another occupant of the property and a process server in support of her position that the Tenants present a safety risk; these affidavits reference only yelling and inappropriate language from the Tenants. As there is no indication in these affidavits that the Tenants threatened the authors or in any way behaved violently towards them, I find these affidavits do not establish that the Tenants present a significant safety risk to the Landlord, the occupant, or the Landlord's property that would necessitate ending the tenancy early. While the Agent and the Landlord alleged that the Tenants are tampering with farming equipment which presents a significant risk to them, the farm employees, and the Landlords property, these allegations were purely speculative in nature as the neither the Agent or the Landlord have witnessed tampering or have any evidence that tampering has occurred. Further to this, as the Agent for the landlord acknowledged that only one attempt was ever made to enter the property with an electrician and that proper written notice was not provided the Tenants as required under the *Act*, I do not find it reasonable to conclude that any fire risk to the property, should it exist, is significant enough in nature to warrant ending the tenancy early.

While I acknowledge that there have been negative interactions between the Tenants, the Landlord, and another occupant of the property, the parties submitted equally compelling evidence that the other is to blame for these negative interactions. Further to this, I find that the Landlord has failed to satisfy me, on a balance of probabilities that these negative interactions or any risks to the property, the Landlord, or the other occupant, should they exist, are sufficiently serious or egregious in nature that it would be unreasonable or unfair to the Landlord or the other occupant of the residential property to wait for a notice to end tenancy under section 47 to take effect. As a result, I dismiss the Landlord's claim for an order ending the tenancy early without leave to reapply. As the Landlord was not successful in her Application, I also decline to grant her recovery of the filing fee.

Although both parties provided significant testimony in relation to the grounds for ending the tenancy early under section 56(2) of the *Act*, as I have already found above that the Landlord has not satisfied me that it would be unreasonable or unfair to the Landlord or other occupants of the residential property to wait for a notice to end tenancy under section 47 to take effect, I find that it is not necessary for me to make any findings of fact in relation to these grounds.

Conclusion

The Landlord's Application seeking to end the tenancy early is dismissed without leave to reapply. The parties are advised to provide evidence in support of their positions in accordance with the rules of procedure and attend the hearing scheduled for April 19, 2018.

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 21, 2018

Residential Tenancy Branch