Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This dispute resolution proceeding was initiated by the landlord, who filed an application for dispute resolution on December 8, 2018 against the tenant. The landlord argues that the tenant is in breach of the *Residential Tenancy Act* (the "Act") and seeks relief by way of an order ending the tenancy earlier than by other means under the Act and an order of possession, pursuant to section 56 of the Act. The landlord also seeks compensation in the amount of $100.00 for recovery of the filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened on January 3, 2019 and the landlord and the tenant attended, and were given a full opportunity to be heard, to present testimony, and to make submissions. The parties did not raise any issues in respect of the service of documents or notices.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Is the landlord entitled to an order ending the tenancy early?
2. If yes, is the landlord entitled to an order of possession, pursuant to section 56 of the Act?
3. Is the landlord entitled to compensation for recovery of the filing fee, pursuant to section 72(1) of the Act?

Background and Evidence

The landlord's application for an order ending the tenancy early, pursuant to section 56 of the Act, states that "[the tenant] is abusive to the other co-tenants and myself. The

last time I spoke with him by telephone, I advised him that I would not meet with him in person unless the police were present."

The tenant lives in a house with several other roommates, with a few in a lower, separate suite. While the landlord oftentimes referred to the roommates as co-tenants, based on the evidence provided, the roommates reside as tenants-in-common. In other words, each tenant has a separate tenancy agreement with the landlord. (The reason I clarify this at the outset is that where a tenancy ends for a co-tenant, that tenancy ends for all tenants.)

The tenant has his own bedroom but shares the rest of the house with the other tenants, who I shall call his roommates. According to the landlord, the tenant commenced his tenancy on October 7, 2018, and monthly rent is $800.00, due on the first of the month. The tenant paid a security deposit of $400.00. There is no pet damage deposit. A reference was made to a written tenancy agreement, though this agreement was not submitted into evidence.

The landlord testified that the tenant drinks to excess, makes decisions affecting the other tenants without proper consultation, clearly does not appear to be a good "fit" for the living arrangement, is messy, and does other things like keep beer in the fridge (when one of the tenants is a recovering alcoholic), and uses other tenants' utensils. These issues started just after the tenant moved in.

In an attempt to resolve the issues, the landlord suggested to the tenant that they enter into a mutual end of tenancy agreement, and the landlord offered him a financial incentive to do so. He went so far as to provide the tenant—who is on disability—with a list of other affordable housing arrangements.

In support of his application the landlord submitted into evidence three written statements by three of the other tenants. One statement, signed by an M.K., referred to the noisy, disruptive conditions that he was living in with the tenant residing there. The second statement, signed and authored by one K.P. describes various issues with the tenant, including missing property, noise, and defecation and urination issues. The third statement, signed by one M.H., refers to the tenant's inappropriate behavior and his alleged "trying to grope me." The landlord explained that all the witnesses who signed these statements were standing by, ready to testify. However, he explained that he had tried to reach the witness M.H. was unable to get through to her, and was only able to leave a voicemail or voicemails.

The tenant testified that the allegations levelled against him are "bogus" and that he is under a great deal of stress. I will not address the multiple allegations that the tenant made against the landlord in referring to him as a "slumlord." The tenant did speak to the event on December 8, 2018, in which, as the tenant describes it, the landlord attempted to "bribe" him to vacate the rental unit, first offering him $500.00, then $1,000.00.

The tenant testified that, in respect of the allegations in the statements regarding beer being kept in the refrigerator, he stated that it is no illegal to keep beer in the fridge and that as a tenant he has a right to do so. He refutes the statements submitted into evidence and argues that the other tenants are all addicts who the landlord has “paid off” to fabricate the statements.

Finally, the tenant testified that he gets along just fine with all the other tenants, pays his rent on time, and that the landlord is simply trying to evict him, so he can raise the rent and do some renovations.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the landlord is claiming that the tenancy must be ended pursuant to section 56(1) of the Act, which is an expedited process for ending a tenancy under what are essentially an emergency set of circumstances.

Specifically, section 56 (1) permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied 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, 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.

In this case, the information contained in the statements—other than the statement referring to an attempted grope by the tenant, of which I will address shortly—does not amount to any of the grounds under section 56 of the Act. I note that the tenancy commenced in early October 2018, and the landlord testified that the issues with the tenant started almost right after he moved in.

However, the landlord did not file an application until December 8, 2018, which indicates that the issues were not of the nature that could not have been dealt with through the issuing of a One Month Notice to End Tenancy for Cause, pursuant to section 47 of the Act. Further, while the three statements referred to ongoing issues with the tenant, they are absent any specific dates of the occurrences of the issues. Two of the three statements appear to have been authored by someone (perhaps the landlord?) other than the people who signed them, and the language within the statements does not strike me as being written by the actual tenants. As such, I place little evidentiary weight on these statements.

The third statement, which does appear to have been authored by one of the other tenants, while describing the issues in greater detail, does not contain sufficient evidence of issues that could not have been dealt with through the issuing of a One Month Notice to End Tenancy for Cause.

Finally, in respect of the statement by M.L., the information contained therein regarding the tenant's alleged attempt to grope the tenant are, *prima facie,* alarming. Indeed, if this information is in fact correct, it may give rise to a potential criminal charge under the *Criminal Code* and would have established a ground to end the tenancy early under this section of the Act.

However, M.L. was the one witness who the landlord was unable to reach and the one witness who would have been able to corroborate the written statement. In this case, given that the tenant vehemently disputes the statements, the onus is on the landlord to establish the allegations as described in the statement of M.L. *with* testimony from M.L.

I have no doubt that all is not well within the house, and indeed many of the issues raised (for example, the tenant's messiness, using others' utensils, and drinking too much beer) are not uncommon in situations where this many people reside together. Friction is going to occur, in some cases more than others, as is the case here. However, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving his claim for an order ending the tenancy early pursuant to section 56 of the Act.

That having been said, the landlord is at liberty to reapply for dispute resolution should further, new issues arise that may give rise to a ground for ending the tenancy under the Act.

Conclusion

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 Act.

Dated: January 3, 2019

Residential Tenancy Branch