



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on December 18, 2018 (the "Application"). The Landlords applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the "Act").

The Landlords appeared at the hearing. The Agent appeared for the Tenant. The Tenant did not appear. The Agent advised that she had authority to appear for the Tenant. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed the Tenant received the hearing package and evidence and raised no issues in this regard.

The Landlords advised that they did not receive the Tenant's evidence. The Agent testified that the evidence package was sent January 7, 2019 by registered mail to the Landlords at the address on the Application. The Agent advised that the registered mail receipt for this had not been submitted. The Agent provided Tracking Number 1 as shown on the front page of this decision.

I looked Tracking Number 1 up on the Canada Post website. It shows the package was sent January 8, 2019. The Agent looked at her receipt and confirmed this was correct. The website shows a notice card was left January 9, 2019.

The Landlords advised that they had left their residence for a period beginning January 6, 2018 and said the Tenant knew this which is the reason the evidence was sent so late.

The Agent had already mentioned that the Landlords were out of town. I asked the Agent why the evidence was sent so late. The Agent said this was because of when the Landlord's package was received. The Agent said she received the hearing package and evidence December 22, 2018. When further asked about the delay in sending the Tenant's evidence, the Agent brought up that our office is closed during the holidays and asked why she should have sent it over the holidays.

I determined that the Tenant's evidence was not sent in accordance with the Rules of Procedure (the "Rules") and asked the parties for their position on admission or exclusion of the evidence. The Agent said she called our office and was told she had 14 days to send the evidence and that she complied with that.

Rule 3.15 of the Rules states as follows:

3.15 Respondent's evidence provided in single package

...

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch **as soon as possible**. Subject to Rule 3.17, the respondent's evidence **must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing**.

[emphasis added]

The definition of "days" in the Rules states:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "**not less than**" a number of days, weeks, months or years, **the first and last days must be excluded**.

[emphasis added]

Here, the Tenant's evidence was sent on January 8, 2019 and the hearing was January 15, 2019. This timing does not comply with rule 3.15 of the Rules as there are only six days between the date the package was sent and the hearing. Further, the notice card was left January 9, 2019, only five days before the hearing.

I do not find it relevant whether the Agent was told she had 14 days to send the evidence or not. The Rules apply to these proceedings. The parties are expected to know the Rules and comply with them. Further, the service requirements would have been outlined in the hearing package which the Agent confirmed receiving.

I find the Tenant failed to comply with the Rules in relation to service of the evidence. I excluded the Tenant's evidence as I found it would be unfair to admit it when the Tenant did not comply with the Rules in relation to timing of service and the Landlords did not receive the evidence prior to the hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Landlord be granted an order ending the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

The Landlords submitted a written tenancy agreement. The Landlords said this is the accurate agreement. It is between the Landlords and Tenant in relation to the rental unit. The agreement started December 01, 2017 and is for a month-to-month tenancy. The agreement states "Agreement – Non smoking". The agreement is signed by the Landlords and Tenant. It shows there is an addendum; however, this was not attached.

The Agent disagreed that this is the tenancy agreement between the Landlords and Tenant. She said the Tenant has lived with the Landlords since March of 2013. The Agent started reading out what she said is the tenancy agreement; however, this was an additional agreement related to utilities signed May 30th. The Agent did not have a copy of the written tenancy agreement signed May 29, 2018.

Landlord M.H. testified as follows in relation to the basis for the Application. The Tenant is smoking in the rental unit and destroying the rental unit which is causing her stress. The Tenant's smoke comes through the ceiling into the Landlords' residence and is causing health issues for her including asthma. The Tenant cannot take care of himself. He goes to the washroom on the floor of the rental unit. The Tenant has a pet that also goes to the washroom on the floor of the rental unit. The Tenant does not clean the mess up.

Landlord M.H. testified about an incident when the police attended the rental unit. She said this related to a complaint that the Landlords shut the Tenant's water off. Landlord M.H. said the Landlords had not done so and that the Agent had called the police and lied about this. Landlord M.H. said the police made sure the Landlord did not shut the water off and that the police saw the Tenant's room. Landlord M.H. said the police pointed out that there were ashes and the fire alarm was not on. Landlord M.H. submitted that this is not safe because the Tenant smokes in the rental unit.

Landlord M.H. testified that she cannot sleep because she is worried about the risk of fire posed by the Tenant given he smokes in the rental unit, removes the fire alarm and is not capable of taking care of himself. Landlord M.H. further stated that the Tenant drinks. I understood this to add to the concern that the Tenant cannot take care of himself and cannot ensure that he is safe in the rental unit.

The Landlords testified that they know the fire alarm in the rental unit is not on because every time they inspect the unit they have to put it back on. Landlord D.S. testified that the rental unit was inspected in early December. The Landlords relied on the photos submitted to show the fire alarm is off. Landlord M.H. testified that the Landlords have done several inspection where the fire alarm was off. She said the Tenant was given a notice about this.

The Landlords submitted that all the grounds for ending a tenancy early under section 56(2)(a) apply. The Landlords submitted that the situation is urgent because it is a very dangerous situation.

The Agent testified that one of the photos of the Tenant smoking submitted by the Landlords is from 2017 in a previous residence. She said the second picture submitted is not inside the rental unit. The Agent submitted that the Tenant's portion of the residence is completely separate from the Landlords' and that smoke cannot enter the Landlords' portion of the residence. The Agent testified that Landlord D.S. goes to the rental unit and smokes with the Tenant. She submitted that the Landlords cannot

complain about the smoke when Landlord D.S. smokes in the rental unit as well. The Agent questioned the cause of Landlord M.H.'s health issues.

The Agent denied that the Tenant goes to the bathroom on the floor of the rental unit. She submitted that the Landlords are not doctors and not in a position to say whether the Tenant can care for himself or not. The Agent said she had people attend the Tenant's place to check on him and the people never contacted her and so his health and ability to care for himself does not seem to be an issue. The Agent testified that the Tenant can take care of himself as long as he is not drinking and that he does not drink every day.

The Agent testified that the Tenant's dog goes to the washroom on a pee pad and not the floor of the rental unit.

The Agent did not know about the fire alarm issue.

The Agent testified about the incident when police attended the rental unit. She said she called the police twice as the Tenant told her the Landlords turned his heat off.

The Agent raised issues that I do not find relevant to this matter in relation to the Landlord kicking in the door of the rental unit, being abusive towards the Tenant and the Landlords turning off the Tenant's heat.

I have reviewed the evidence submitted by the Landlords. It includes witness statements, photos and notes from doctors. The following further issues are raised in the evidence:

- That witness M.Z. has observed the Tenant be aggressive, damage the house including break a window, smoking in the rental unit, be violent, threaten the Landlords
- An issue with a door lock
- Agent threatening the Landlords
- Agent spitting on car of Landlords
- Plumbing issue

Analysis

Section 56 of the *Residential Tenancy Act* (the “*Act*”) allows an arbitrator to end a tenancy early where two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a 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 has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlords, as applicants, have the onus to prove the circumstances meet this two-part test.

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.

I note that I accept that there is a written tenancy agreement in this matter between the Landlords and Tenant in relation to the rental unit. I also accept that it is as stated in the written agreement submitted given the Tenant signed the agreement.

The Landlords raised an issue in relation to the Tenant smoking in the rental unit and causing health issues for Landlord M.H. The Landlords submitted notes from doctors in support of this. However, nothing in the evidence satisfies me that this is an urgent situation such that it would be unreasonable or unfair to require the Landlords to wait for a One Month Notice to End Tenancy for Cause to take effect.

The Landlords submitted that the situation with the Tenant is dangerous because he smokes in the rental unit, takes the fire alarm off and is unable to take care of himself such that they are concerned about the fire risk posed. The Landlords did not submit any evidence about the fire alarm being turned off or removed. The Landlords pointed to the photos submitted which do not assist as they simply show the Tenant smoking. The photos do not show that the fire alarm has been turned off or removed. Nor did the Landlords submit evidence that the Tenant is unable to take care of himself. The Agent denied that the Tenant is unable to take care of himself. I am not satisfied based on the evidence submitted that the Tenant does anything to the fire alarm or is unable to care for himself. Therefore, I am not satisfied that the Tenant smoking in the rental unit creates a dangerous situation that justifies an early end to tenancy under section 56 of the *Act*.

I am not satisfied that the Tenant goes to the bathroom on the floor of the rental unit or allows his pet to do so without cleaning up. The Agent disputed that the Tenant does so. The Landlords did not submit evidence in support of their position.

I do not find the issues raised in relation to the Agent calling the police relevant. Section 56 of the *Act* requires the issue to be with the Tenant or someone the Tenant has allowed on the property. My understanding from the materials and submissions is that the Agent called the police from her own residence. I do not find this to be an issue that can lead to an early end to tenancy under section 56 of the *Act*.

I note the witness statement of M.Z. which raises further issues in relation to the Tenant including that he is aggressive, violent, threatens the Landlords and broke the Landlords' window. The Landlords did not raise these issues at the hearing other than what is noted above. Witness M.Z. did not appear at the hearing to testify in relation to these issues. I do not find the witness statement of M.Z. to be sufficient evidence of the issues raised when the Landlords did not raise these issues during the hearing.

Nor did the Landlords raise an issue about the door lock. It is not clear to me from the materials what the issue with the door lock is. I am not satisfied that this is an issue that justifies an early end to the tenancy.

The Landlords did not discuss the Agent spitting on their car during the hearing. The Landlords submitted a photo of this with a brief explanation. Without further information and evidence about this point, I am not satisfied it is sufficient to end the tenancy early under section 56 of the *Act*.

In relation to the Agent threatening the Landlords, the Landlords did not discuss this during the hearing. It is not clear to me from the materials what the alleged threats were, when they occurred or whether the Agent was at the property at the time. Without further information and evidence on this point, I am not satisfied it is an issue that should lead to an early end to the tenancy.

The Landlords did not discuss a plumbing issue at the hearing. The Landlords submitted a photo with a brief explanation about this with their evidence. Without further information and evidence on this point, I am not satisfied it is an issue that should lead to an early end to the tenancy.

Considering the testimony of the parties and evidence submitted, I am not satisfied that the Landlords have met their onus to prove the circumstances meet the two-part test set out in section 56 of the *Act*. The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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 15, 2019

Residential Tenancy Branch