



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for an Order to end the tenancy early under Section 56 of the *Act*, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Landlords and the Tenant were present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord stated that they did not receive a copy of the Tenant’s evidence despite the Tenant stating that he served the evidence to them in person. The evidence submitted by the Tenant was reviewed and the Landlords stated that they had not received the two documents. As I cannot confirm that a copy of the Tenant’s evidence was served to the Landlords as required by the *Residential Tenancy Branch Rules of Procedure*, the Tenant’s evidence is not accepted and will not be included in this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Are the Landlords entitled to an Order of Possession to end the tenancy early under Section 56 of the *Act*?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to some of the details of the tenancy. The tenancy began on November 28, 2018. There was no written tenancy agreement and instead a verbal agreement was made between the parties.

The Landlords stated that monthly rent is \$1,400.00 while the Tenant stated that the monthly rent amount is currently in dispute. The parties noted that they have an upcoming dispute resolution proceeding regarding a dispute over a 10 Day Notice to End Tenancy for Unpaid Rent. The parties agreed that no security deposit was paid but were not in agreement as to whether the Landlords had requested a deposit or not.

The Landlords testified that they applied to end the tenancy early due to a number of concerns. They stated that this includes issues with the Tenant not paying rent on time, not paying the security deposit, and that the Tenant has not moved out despite a verbal agreement that this would be a short-term rental only. The Landlords submitted copies of text messages with the Tenant regarding payment of rent and the security deposit, as well as discussions of when the Tenant would move out.

The Landlords also noted concerns with regular noise disturbance from the Tenant's unit, such as screaming and yelling during the night. They stated that they have spoken to the Tenant and other occupants about this as well as knocked on the wall to get them to stop yelling. The Landlords submitted 3 audio recordings into evidence which they stated demonstrate the type of yelling that can be heard from the rental unit.

The Landlords also stated their concern for damage to the property as they recently realized a bannister was broken and that they are aware the Tenant and/or occupants are smoking inside the rental unit, leading to the potential for further damage.

The Landlords provided further testimony that the tenancy was supposed to be short-term only. They stated that the agreement was originally for three months but was extended after the Tenant had surgery and needed time to heal before moving. They stated that they want their rental unit back.

The Tenant stated that there is no damage in the rental unit and that no one smokes inside the rental unit. He also stated that the accusations of screaming are inaccurate and that the Landlords have never spoken to him about this until the hearing. He stated that the recordings submitted by the Landlord were during an argument that was occurring in the rental unit and was not violent or threatening. He testified that he was unaware that the Landlords were able to hear conversations in the rental unit as it had never been brought to his attention prior.

The parties were provided the opportunity to discuss settlement but were unable to reach an agreement.

Analysis

As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim.

The Landlords applied for an Order to end the tenancy early under Section 56 of the *Act*. Section 56(2) of the *Act* states the following:

- (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.

While the Landlords provided testimony and evidence regarding issues with payment of rent and the security deposit, I do not find this to be a reason to end the tenancy as stated under Section 56. I also do not find an application under Section 56 of the *Act* to be the appropriate remedy for ending the tenancy should the Landlords believe that they had a mutual agreement to end the tenancy.

Although the Landlords also noted some damage to the rental unit, I find that they did not submit evidence of this that would establish that the property is at significant risk as stated under Section 56 of the *Act*.

As for the Landlords' claim that the Tenant is causing significant noise disturbance, again I do not find that this meets the high standard required to end a tenancy under Section 56. As noted in Section 56(2)(b), a landlord must also establish that it would be unreasonable to wait for a One Month Notice to take effect.

The audio recordings submitted by the Landlords establish that yelling occurred, but I do not find sufficient evidence before me to be satisfied that this is occurring regularly and that it is significantly interfering with or unreasonably disturbing another occupant or the landlord.

The Tenant's testimony that this was an argument he had with someone in the rental unit is plausible and that he was not aware that the Landlords were able to hear him in the rental unit. When two parties to a dispute resolution proceeding present conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. I am not satisfied that the Tenant is causing significant disturbance such that the tenancy should end immediately.

An application under Section 56 is reserved for urgent matters and is not meant to bypass the process for ending a tenancy with a notice served under Section 47 of the *Act*. In this matter, I am not satisfied that there is cause to end the tenancy urgently

under Section 56 of the *Act* and that it would be unreasonable to wait for a One Month Notice to End Tenancy for Cause to take effect.

Therefore, I decline to award the Landlords an Order of Possession. This tenancy continues until ended in accordance with the *Act*. As the Landlords were not successful with their application, I decline to award the recovery of the filing fee.

Conclusion

The Landlords' Application for Dispute Resolution is dismissed, without leave to reapply. This tenancy continues until ended in accordance with the *Act*.

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: May 30, 2019

Residential Tenancy Branch