



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REAL PROPERTY MANAGEMENT
PINNACLE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an early termination of the tenancy and an Order of Possession pursuant to section 56 of the Act, and to recover the cost of their filing fee.

An Agent for the Landlord, B.S., ("Agent") and the Tenants, S.M. and J.M., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenants said they had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to the all Parties, with any orders sent to the appropriate Party.

The Agent has a court order restraining for the Tenant, S.C., from contacting the Agent

by telephone or text; however, the Tenant, S.C., said he confirmed with the Court that he is not in breach of the Order to attend the RTB hearing. The Agent did not disagree with this.

The Tenants made several comments about the need for repairs to the rental unit, but I informed them that these are not issues before me, as they did not file an application against the Landlord in this regard. This hearing is limited to the issues raised by the Landlord in the Application.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the early termination of the tenancy in accordance with section 56 of the Act?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties confirmed that the fixed term tenancy began on March 1, 2019, and is scheduled to run to February 28, 2021, with a monthly rent of \$2,500.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,250.00, and a pet damage deposit of \$1,250.00. The Parties agreed that the residential property is a single family dwelling, with the Tenants' rental unit on the main floor and a suite in the basement. The Tenant, J.M., said that she moved out of the rental unit on June 25, 2019.

In the hearing, the Agent said that the Tenant, S.C. was charged with assaulting J.M., and that S.C. has a no-contact order with J.M. The Agent submitted text and email evidence from another tenant in the building, "D.D.", who had said she is affected by S.C.'s yelling and J.M.'s texts. S.C. said that he and J.M. know D.D. from prior to the tenancy. S.C. said he has known D.D. for more years than he has known anyone else there. The Parties agreed that the three tenants of the residential property were all friends prior to S.C. and J.M. moving into the rental unit.

The Agent said that D.D. advised him that she is staying elsewhere until S.C. is evicted from the building. The Agent said that J.M., and D.D. have both made "several complaints" to the police and the Agent about S.C. However, J.M. said that D.D. has moved back to the residential property, so the Application should be cancelled.

The Agent said that he has had numerous calls from neighbours complaining about the Tenants' fighting. He said there was a domestic dispute on June 1, 2019, and that the police attended the premises. The Agent said that the Tenants were screaming and swearing and that the downstairs tenant left in fear for her safety. The Agent submitted a transcribed copy of a statement that he said S.C. made to him on June 2, 2019, as follows:

[S.C.]
To me

Hello [B.]. [J.] charged me with assault this morning. She assaulted Me last night, the argument continued this morning, rcmp were called, I gat charged. Its unreal. I have a no contact order, I cant go to the House untill court on July 11. I need to find somewhere else to live. I need my name off the lease.

[reproduced as written]

I asked S.C. about the Landlord's submission of a photograph of J.M., with blood on her forehead. S.C. said that they had a heated argument and that they bumped heads; he said that the cut on his head was more severe than the one on hers. He also said that he was the one who called the police that night, not J.M., and that the police charged him with assaulting her. The Tenants agreed that as of June 2, 2019, S.C. has a no-contact order with J.M. When I asked J.M. about the incident, she talked about the Agent's failure to fix a leak in the roof, but not about the dispute between the Tenants.

S.C. denied having threatened anyone. The Agent said he has a recording of being threatened by S.C., although, he did not submit it into evidence before me. S.C. said that the only thing he said to the Agent was: "I'll see you in court."

J.M. said that the Application should be struck down, because D.D. returned to the residential property at the beginning of the month, "so she cannot be in fear for her life," as the Agent states. Generally, J.M.'s evidence was focused on criticizing the Agent, and D.D.

The Agent said that S.C. defied the no-contact order with J.M. and stayed at the rental unit one night after the no-contact order was in place. However, S.C. asked the Agent for dates of when this allegedly happened. S.C. said that he is staying at another address that he identified in the hearing, and he said he obtained permission to attend the rental unit to feed the dogs, since J.M. had moved out.

S.C. said that he and D.D. “are fine”, as they have been friends for a long time. He said his relationship with J.M. is like a marriage, as they are a common law couple and every married couple fights. He said they were just having a dispute and that he called the police and an ambulance for J.M., as he was worried about her injury. He said he did not mean to assault J.M. He said that the next morning, the neighbours called the police again, because he and J.M. were yelling at each other again.

J.M. said she moved out, because of D.D.’s excessive smoking, despite the residential property being non-smoking; J.M. said it was not because of ongoing disputes between her and S.C. J.M. said that S.C. has an anger problem, but that he has been sober for over a year and was “doing great until we moved into that house.”

The Agent submitted an email chain between himself and S.C. from June 13 to 20, 2019. These communications detail some of the issues the Parties mentioned in the hearing as having with one another, although, none were related to the issues before me. This evidence demonstrates the animosity between the Parties that was also clear in the hearing.

The Agent submitted five texts from D.D. about the Tenants. Her complaints include: that someone was growing cannabis in the back yard of the residential property; that S.C. slept in her apartment after a big fight with J.M.; that J.M. sends nasty texts to D.D.; and that D.D. does not think the situation is going to work with the Tenants living there.

Given the animosity between the Parties, I discussed the possibility that the Tenants might be happier elsewhere. J.M. said that she already moved out, and S.C. said he has built a business in the area and that he does not have anywhere else to go; therefore, he is not interested in a mutual agreement to end the tenancy and awaits my decision in this matter.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

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.

Section 56 of the Act establishes grounds on which a landlord may apply for dispute resolution to request an early termination of a tenancy and order of possession. In order to grant such an order, I need to be satisfied that the Tenants have done any 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 adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
5. engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
6. caused extraordinary damage to the residential property, **and**

It would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property to wait for a notice to end tenancy under section 47 to take effect.

Policy Guideline #51 ("PG #51") states:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month). Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;

- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

In this case, the Agent submitted evidence of J.M. having been injured by S.C., and that S.C. was charged by the police and given a no-contact order regarding J.M. However, J.M. has moved out of the rental unit, so her safety is no longer an issue at the residential property. Further, the evidence before me is that D.D. was unreasonably disturbed by the fighting between S.C. and J.M.; therefore, as J.M. has chosen to live elsewhere, the disturbance of S.C. fighting with J.M. has been resolved for D.D. Complaints by the neighbours of other buildings not connected to the residential property about tenants in the rental unit are outside my jurisdiction, as the neighbours are not occupants of the residential property.

I find that the Landlord has established that the Tenants have interfered with and disturbed another occupant's lawful right to quiet enjoyment on one occasion,. However, I find that the Landlord has not established that another occupant's health or safety or lawful right or interest is in jeopardy with the ongoing tenancy. Further, there is no evidence before me that the Tenants have put the Landlord's property at significant risk or engaged in illegal activity. I find on a balance of probabilities that it would not be unreasonable or unfair to the Landlord, the Tenants or other occupants of the residential property to wait for a Notice to End Tenancy for Cause to take effect.

I, therefore, find that the Landlord has not met the burden of proof in this matter. Accordingly, I dismiss this Application in full without leave to reapply, and I order that the tenancy continues until ended in compliance with this Act.

Conclusion

The Landlord applied for early termination of the tenancy and an order of possession, pursuant to section 56 of the Act. However, I have found that the Landlord has not met the burden of establishing on a balance of probabilities that it would be unreasonable, or unfair to the Landlord, the Tenants or other occupants of the residential property to wait for a Notice to End Tenancy for Cause to take effect.

I order that the tenancy continue until ended in compliance with the Act, regulations and tenancy agreement.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 09, 2019

Residential Tenancy Branch