



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 18, 2019 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord sought reimbursement for the filing fee.

The Landlord, Counsel and Owners appeared at the hearing. Nobody appeared for the Tenant. I explained the hearing process to the parties who did not have questions when asked. The Landlord and Owner E.P. provided affirmed testimony.

The Landlord had included an Application for Substituted Service in the materials. I asked about this at the outset. Counsel indicated that the Tenant had been served with the necessary documents for this hearing but that the Landlord was seeking an order that the Tenant can be served by email moving forward. I advised Counsel that substituted service applications relate to the application being made and not service of future documents. Counsel acknowledged that the Application for Substituted Service was not necessary for this Application.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified as follows. The hearing package and evidence were sent to the Tenant at the rental unit by registered mail on July 26, 2019. The Landlord provided Tracking Number 1 for this. The package was also posted to the door of the rental unit July 26, 2019. The Tenant’s belongings are still in the rental unit and the Tenant comes and goes from the rental unit.

The Landlord did not submit any documentary evidence relating to service of the hearing package and evidence.

I looked Tracking Number 1 up on the Canada Post website which shows a notice card was left July 30, 2019 and August 06, 2019.

I accept the undisputed testimony of the Landlord about service. I find the Tenant was served in accordance with sections 88(c), 88(g), 89(2)(b) and 89(2)(d) of the *Residential Tenancy Act* (the “*Act*”). The Tenant is deemed to have received the hearing package and evidence July 29, 2019 pursuant to section 90(c) of the *Act*. I also find the Landlord complied with rule 10 of the Rules of Procedure (the “*Rules*”).

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord, Counsel and Owners were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence submitted 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 issued an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted a written tenancy agreement. It is between Owner E.P., the Tenant and Q.S. in relation to the rental unit. The tenancy started July 01, 2019 and is for a fixed term ending June 30, 2020. Rent is \$1,850.00 per month due on the first day of each month. The Tenant paid a security deposit of \$925.00. The agreement is signed by the Landlord and Tenant. It is not signed by Q.S. Counsel advised that Q.S. is only 17 years old and has mental health challenges. Counsel submitted that Q.S. is an occupant and not a tenant.

Counsel submitted as follows in relation to the grounds for the Application. The Tenant has not paid rent during the tenancy. The Tenant has been issued a notice to end tenancy. The Application was filed given the unpaid rent and circumstances that present a significant risk to the Landlord’s property and others. The Landlord gained

access to the renal unit which has fallen into disrepair. The concern is that this will continue. The Tenant has been involved in similar proceedings previously. The Tenant has previously damaged rental units, stolen from rental units, had pets living in rental units without permission and been discovered to have an unsecured handgun.

The Landlord testified as follows. She accessed the rental unit with the permission of the Tenant. It did not look like anyone was living in the rental unit. The rental unit is furnished. The sheets on one of the beds were black. One of the beds had been taken apart and the top was in the laundry room. There were clothes in the washer. It was difficult to get into the laundry room because there was junk all over. The toilet was filthy. There were computer parts and debris all over the place. Garbage and junk were starting to accumulate in the rental unit. Urine was left in the toilet and it smelled bad. The rental unit had not been cleaned. There were footprints on the carpet from people not taking their shoes off. There were dishes in the sink and food on the counter. Food in the fridge was growing mold. Towels had been removed from the closet and piled on the bed.

The Landlord said that, since filing the Application, she has become aware of five prior owners who were landlords to the Tenant and who had this happen to their property. She said she can see the same thing happening in the rental unit. The Landlord said she is concerned for the rental unit and building.

The Landlord also testified about unpaid rent and issues with the Tenant in previous tenancies.

The Landlord did not submit any evidence of the state of the rental unit.

Counsel advised that the basis for the Application is the state of the rental unit as well as the history of the Tenant in other tenancies. Counsel submitted that a handgun was found in another rental unit associated to the Tenant. Counsel acknowledged that there was no evidence submitted in relation to this. Counsel submitted that a further basis for the Application relates to the Owners attempting to end the tenancy by agreement of the Tenant and issues that have arisen in this regard. Counsel submitted that the prior tenancies and issues that arose with the Tenant are relevant as they show a pattern of behaviour.

Analysis

Q.S. was named on the Application as a tenant. Given the position of Counsel that Q.S. is an occupant and not a tenant, and given Q.S. did not sign the tenancy agreement, I have removed Q.S. from the style of cause.

Section 56 of the *Act* allows an arbitrator to end a tenancy early when 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 Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

Orders issued under section 56 of the *Act* are reserved for the most serious and urgent of situations. Unpaid rent is not a basis to end a tenancy under section 56 of the *Act*. Nor are failed attempts at ending the tenancy by agreement of the Tenant a basis to end a tenancy under section 56 of the *Act*.

As explained to the parties during the hearing, issues that have arisen in prior tenancies between the Tenant and prior landlords are not a basis to end this tenancy. The issue before me is what has happened or is happening in this tenancy between this Tenant and this Landlord that meets the two-part test in section 56 of the *Act*.

The Landlord and Counsel submit that the issue is the state of the rental unit. However, the Landlord submitted no evidence to support her testimony about the state of the rental unit. There are no photos or video evidence showing the state of the rental unit. I do not find the Landlord's explanation for the lack of photographic evidence compelling given she was in the rental unit with the permission of the Tenant. There are no witness statements supporting the Landlord's testimony about the state of the rental unit. There are no copies of letters or notices issued to the Tenant about the state of the rental unit. The Landlord did not call any witnesses at the hearing to testify about the state of the rental unit. I find it would have been simple for the Landlord to obtain and provide such evidence.

What the Landlord has described is a rental unit that is not clean. This will rarely justify ending a tenancy under section 56 of the *Act* as it is rarely an urgent situation. A dirty rental unit cluttered with garbage and junk can be addressed through a One Month Notice. The Landlord would need to submit compelling evidence that the rental unit is in such poor condition that it would be unfair or unreasonable to require her to wait for a One Month Notice to take effect. The Landlord has failed to do so here as there is no evidence before me supporting the testimony of the Landlord about the state of the rental unit and the Landlord's testimony alone does not satisfy me that this is a rare circumstance where an unclean rental unit meets the two-part test set out in section 56 of the *Act*.

I am not satisfied that evidence from prior tenancies is relevant in the circumstances. Evidence from prior tenancies is not sufficient to prove the state of the current rental unit or that the circumstances currently are such that the two-part test in section 56 of the *Act* has been met. The Landlord has failed to prove that during this tenancy the Tenant has put the Landlord's property at significant risk or caused extraordinary damage to the residential property such that the tenancy should be ended early. This is the issue before me.

The Landlord has failed to prove that the circumstances meet the two-part test set out in section 56 of the *Act*. The Application is dismissed without leave to re-apply. Given the Landlord was not successful in this Application, I decline to award the Landlord reimbursement for the filing fee.

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: August 13, 2019

Residential Tenancy Branch