



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 Landlords on April 21, 2020 (the "Application"). The Landlords applied for an order ending the tenancy early under section 56 of the *Residential Tenancy Act* (the "Act"). The Landlords also sought reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlords and confirmed he had authority to appear for the Landlords. The Tenant did not appear at the hearing. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlords' evidence.

The Agent confirmed the hearing package was emailed to the Tenant. A Proof of Service was submitted showing this was done April 22, 2020.

The Agent confirmed that the evidence was sent to the Tenant by email. Emails in evidence show this was done May 06, 2020 and May 09, 2020. The emails show that only the statement of J.E., statement of Landlord M.E. and two photos of the kitchen were sent.

During the hearing, I allowed the Agent to upload an email dated March 09, 2020 showing the email address of the Tenant as the emails previously uploaded only show the Tenant's name.

A Director's Order was issued March 30, 2020 stating that the following applies during the current state of emergency:

...a document of the type described in section 88 or 89 of the *Residential Tenancy Act*...has been sufficiently given or served for the purposes of the applicable *Act* if the document is given or served on the person in one of the following ways...

- the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

I am satisfied based on the undisputed testimony of the Agent, Proof of Service and emails submitted that the Tenant was served with the hearing package and evidence noted above in accordance with the Director's Order. I am satisfied based on the email dated March 09, 2020 that the email address used is a current email address for the Tenant. I am satisfied based on the emails dated March 27, 2020 that the parties correspond by email. I am satisfied the Tenant was sufficiently served with the hearing package and evidence noted above. The Tenant is deemed to have received the hearing package April 25, 2020 and the evidence May 09, 2020 and May 12, 2020.

I am satisfied based on the Proof of Service that the hearing package was sent April 22, 2020 and find the Landlords complied with rule 10.3 of the Rules of Procedure (the "Rules") in relation to timing of service of the hearing package.

I am not satisfied the Landlords complied with the Rules in relation to the timing of service of the evidence. However, I admit the evidence noted above pursuant to rule 3.17 of the Rules as I am satisfied it was served on the Tenant, minimal evidence was sent and could have been reviewed in very little time and the Tenant did not appear at the hearing to raise an issue about the timing of service. In these circumstances, I do not find it would be unfair to the Tenant to admit the evidence despite the late service.

I find the following in relation to the remaining evidence.

In relation to the photos of garbage in the yard, I am not satisfied these were served on the Tenant given the absence of evidence showing they were served. The Landlords were required to serve all evidence pursuant to the Rules. This evidence is excluded

because it is not evidence the Tenant would otherwise have. I find it would be unfair to consider evidence the Tenant is not aware of.

The written tenancy agreement is admitted because the Tenant signed it and would have been aware of it regardless of service.

The email correspondence between the parties is admissible because it involved the Tenant and he would have been aware of it regardless of service.

The email from D.M. is not admissible as there is no evidence it was sent to the Tenant and the Tenant would not be aware of it in the absence of service. I find it would be unfair to consider evidence the Tenant is not aware of.

This covers all the evidence submitted.

As I was satisfied of service of the hearing package and some evidence, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an order ending the tenancy early under section 56 of the *Act*?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted in evidence. The tenancy started May 01, 2019 and is a month-to-month tenancy. Rent is \$850.00 per month due on the first day of each month. The Tenant paid a \$425.00 security deposit. The agreement is signed by the Landlords and Tenant.

The Agent testified as follows in relation to the basis for the Application.

The Tenant has not paid rent or utilities since December of 2019. The Tenant was served with a 10 Day Notice in March. The Tenant was supposedly going to move;

however, the state of emergency was declared and the Tenant said he would not move and the Landlords could not make him move. The Landlords are paying the electrical bills because they are concerned the Tenant will use other forms of light and heat if the power is shut off and this would pose a risk to the property. It is unreasonable for the Landlords to have to pay for the Tenant.

The Tenant has caused extraordinary damage as shown in the photos. A second building on the property is rented to another individual. This individual cannot access the building because of the garbage in the yard. There is garbage and vehicles in the yard which could be a biohazard. The Tenant has damaged the inside of the house. Hardware is missing from the kitchen cabinets. There is an ant infestation in the kitchen. The stove has been damaged. The hardwood floor has been damaged and scratched. The clean up and repairs required are approaching \$100,000.00 which is 25% of the property value.

I noted that there is no evidence submitted showing the Landlords have asked the Tenant to clean up the rental unit or property and asked the Agent if this had been done. The Agent said he could not find anything in the materials showing the Landlords have asked the Tenant to clean up the rental unit or property.

The Agent further testified as follows in relation to the basis for the Application.

There are people living at the rental unit that the Landlords do not know. One of these people put a lock on one of the bedroom doors. This person was taken away by police due to a breach of something when the police attended with Landlord M.E. Landlord M.E. is afraid to go to the rental unit without police because of the people living there.

J.E. attended the rental unit to help clean it up. When he asked for money for the work, someone swore at him and chased him with a broom.

Police have told the Landlords they have attended the rental unit previously. Police were not willing to provide a statement about this.

The Agent did not know if the Tenant had ever been issued a One Month Notice under section 47 of the *Act*.

I pointed out that this tenancy started in May of 2019 and asked the Agent why this was an issue now. The Agent stated as follows. Because the Tenant stopped paying rent and utilities. Landlord M.E. attended the rental unit in January and the place was dirty

but looked okay. Then the Tenant stopped paying rent. The Landlords attended again and the place was a disaster. There were people in the house the Landlords did not know. There was a verbal conversation between Landlord M.E. and the Tenant about rent and cleaning up the place and the Tenant basically said, "yeah when I get around to it". It got to a point where the place is unsafe and the Tenant needs to be out. The property is rapidly deteriorating.

The Landlords submitted the following relevant evidence.

Two photos of the kitchen which show the following. Kitchen items on the counter. An open container of food on the counter. Kitchen items on the stove. Damage to the oven door. Dishes in the sinks. Two kitchen cupboard knobs missing.

A signed statement from Landlord M.E. stating the following. She attended the rental unit March 29, 2020 and asked police to attend. There were several bags of garbage behind the door. The kitchen counters were covered with pots, pans and other articles. There were ants on the counter. Upstairs was messy and unkept. One of the bedrooms had a lock on it. The bedroom was a mess. The police recognized the person in the room and took him away for a breach. The basement was a mess. There was garbage and junk all over the place. In relation to the people staying at the house, the letter states, "I do not know these people and with their criminal records, I am afraid to attend the property without police accompanying me".

A document stating it is an email from J.E. The document is not a screen shot of an email, it is a word document with an email either pasted into it or reproduced. It does not have J.E.'s name anywhere. It is not from an email address clearly associated to a J.E. It is not signed.

Analysis

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 Landlords, as applicants, have the onus to prove the circumstances meet this two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Tenant failing to pay rent and utilities is not a basis to end a tenancy under section 56 of the *Act*. It does not meet any of the requirements set out as the first part of the test under section 56 of the *Act*. Further, a situation that is not sufficiently serious to warrant ending a tenancy under section 56 of the *Act* does not become sufficiently serious on the basis that the Tenant is not paying rent or utilities.

I am not satisfied based on the evidence provided that the Tenant has caused extraordinary damage to the rental unit or property.

I do not find the Agent's testimony alone sufficient to prove extraordinary damage as this is an issue the Landlords could have obtained evidence of through photos, videos, reports or assessments of the alleged damage. Therefore, I have considered what documentary evidence has been provided to show extraordinary damage.

The only admissible photos submitted include two photos of the kitchen. These photos do not support that the Tenant has caused extraordinary damage. The only damage shown in the photos is a damaged oven door and two kitchen cupboard handles missing. This is not serious or extensive damage. The photos show the kitchen is dirty and messy; however, this is not the equivalent of extraordinary damage as dirt and mess can be cleaned up. The photos do not show that the dirt and mess is having a lasting affect on the kitchen.

I place no weight on the document meant to be an email from J.E. given it is a word document and not a screen shot of an original email, does not state J.E.'s name and is not signed by J.E. I do not find the document to be a reliable piece of evidence in the circumstances.

There is insufficient evidence in Landlord M.E.'s statement about damage to the rental unit. The statement does not outline damage to the rental unit or property. Landlord M.E. outlines that the rental unit and property are messy, unkept and have garbage around. I accept that the rental unit and property are dirty, messy and unkept based on the statement of Landlord M.E. and the two photos. However, as stated, I am not satisfied the dirt and mess constitutes extraordinary damage as there is insufficient evidence that it is having a lasting affect on the rental unit and property.

I find it relevant that there is no evidence before me that the Landlords have ever issued the Tenant a notice or written correspondence advising the Tenant to clean up the rental unit or property or repair damage he has caused. In my view, if the Tenant had caused extraordinary damage or if the dirt and mess was causing extraordinary damage, the Landlords would have taken the reasonable first step of issuing the Tenant written correspondence that this was an issue and to address it.

There is insufficient evidence before me of any biohazard. I do not find the Agent's testimony alone on this point sufficient as I would expect there to be some documentary evidence of this. I am not satisfied this is an issue.

I am satisfied based on the statement of Landlord M.E. that there were ants in the kitchen when she attended the rental unit in March. I am not satisfied based on the evidence provided as to the extent of the problem. In the absence of further evidence about an ant infestation, I am not satisfied it is extraordinary damage versus something that can be addressed by cleaning up the rental unit.

There is insufficient evidence before me that the hardwood floor in the rental unit has been damaged. I do not find the Agent's testimony alone sufficient as I would expect to see photos or video showing the extent of the damage, particularly when the Landlords have provided photos of the kitchen. In the absence of further evidence, I am not satisfied the Tenant has caused extraordinary damage to the floors.

I am not satisfied based on the evidence provided that there is \$100,000.00 worth of clean up and repairs to be done to the rental unit and property. I do not find the Agent's testimony alone sufficient as I would expect the Landlords to have submitted more than

two photos of a dirty kitchen if there was in fact this much damage. I do not find that the statement of Landlord M.E. supports that there is damage, let alone \$100,000.00 worth of damage. I again note that there is no evidence before me that the Landlords have ever asked the Tenant to clean up the rental unit or repair damage he has caused. I would expect to see such correspondence if the Tenant had caused \$100,000.00 worth of damage to the rental unit or property.

Unknown people living at the rental unit is not sufficient to end this tenancy under section 56 of the *Act*. There is insufficient evidence before me that these people have caused an issue that meets the first part of the test set out in section 56 of the *Act*. I find it irrelevant that one person was taken away by police as I understand from the evidence provided that this had nothing to do with the rental unit or property or anything that occurred in relation to the rental unit or property. Further, it may be that Landlord M.E. is afraid to go to the rental unit without police; however, the Landlords have failed to provide sufficient evidence to show that this is a fear based on something that has occurred versus their own personal beliefs about the people in the rental unit.

I am not satisfied that J.E. was sworn at or chased with a broom in the absence of further evidence on this point. As stated above, I place no weight on the email submitted. The Agent testified about this; however, I did not understand the Agent to say that he himself observed this and therefore do not find his testimony alone sufficient to prove this occurred.

In relation to police attending the rental unit, I have insufficient evidence before me that this has occurred, when it occurred, how many times it occurred or why it occurred. In the absence of further evidence, I am not satisfied the police attendance is relevant to the two-part test set out in section 56 of the *Act*.

I am not satisfied based on the evidence provided that the state of the rental unit has deteriorated drastically since January or that it continues to deteriorate. Again, the Landlords could have obtained evidence of this through photos or videos. No such evidence has been submitted showing the rental unit has deteriorated or is deteriorating drastically. Landlord M.E. specifically provided a signed statement for this hearing. The statement mentions the January and March inspections of the rental unit. The statement does not say that the rental unit or property has gotten worse or is getting worse. In the absence of further evidence, I am not satisfied the rental unit has deteriorated since January or is deteriorating drastically.

I find it likely that the issue here is that the Tenant is not paying rent or utilities. I find this due to the following. This is the first issue the Agent raised at the hearing. The Agent raised this issue numerous times throughout the hearing. The evidence does not support the other issues alleged. The evidence does not support that the rental unit or property has deteriorated since January or is deteriorating drastically. The evidence does not support that the Landlords have taken reasonable steps to address the other issues alleged. As stated, non-payment of rent and utilities is not a basis to end a tenancy under section 56 of the *Act*.

I am not satisfied the evidence provided is sufficient to prove the alleged issues. I am not satisfied based on the evidence provided that the issues are serious enough to warrant ending the tenancy under section 56 of the *Act*. For the most part, the issues raised are the type of issues that should be addressed through correspondence with the Tenant and a One Month Notice issued under section 47 of the *Act*.

I am not satisfied the Landlords have proven that the circumstances meet either part of the test under section 56 of the *Act*. The Landlords have failed to prove the tenancy should end under section 56 of the *Act*. I decline to issue the Landlords an Order of Possession.

I note that the outcome would not have been different even if all of the documentary evidence provided had been admissible.

Given the Landlords were not successful, I decline to award the Landlords reimbursement for the filing fee.

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: May 13, 2020

Residential Tenancy Branch