



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 13, 2020, wherein the Landlord requested an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act* (the "Act") and recovery of the filing fee.

The hearing of the Landlord's Application was conducted by teleconference at 11:00 on June 5, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was assisted by an agent as well as legal counsel. The Landlord also had two witnesses available to testify, L.F. and C.M., although when C.M. was asked to called back into the hearing she did not call back in and therefore did not testify.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant confirmed the spelling of his given name. Pursuant to section 64(3)(c) I amend the Landlord's Application to correctly note the Tenant's name.

The rental unit is the lower unit in a house. Again, I amend the Landlord's Application to correctly note this.

Issues to be Decided

1. Is the Landlord entitled to an early end to tenancy?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's agent testified that the tenancy began March 1, 2020. The rental unit is a fourplex owned by the Landlord. The Tenant rents one of the bedrooms in the downstairs rental unit; the other two bedrooms are rented out to other tenants. The Tenant pays \$498.00 a month in rent for his bedroom.

On the Application the landlord set out the following reasons for requesting an early end to tenancy:

Smoking marijuana and other substance unbearable to other tenants. Harrassing and threatening other tenants causing them to feel unsafe and worried. Causing significant damage to property: burning in the backyard, destroying shed, destroying ceiling, digging into ground close to water pipe. Placing significant amount of garbage around propeerty. Harrasing and threatening landlord. Parking 4 cars when he has 2 spots, blocking others, causing arguments. Bringing strangers to live on property.

[reproduced as written]

The Landlord's agent stated that the upstairs renters are moving out due to the actions of the Tenant. She also confirmed that the downstairs renters (who rent separate bedrooms in the same unit as the Tenant) have moved out such that the Tenant is occupying the entire basement on his own.

The Landlord's agent also stated that the Tenant is involved in a "lot of dangerous activities". When asked to clarify, she stated that the Tenant stored six jerry cans of gasoline in one of the bedrooms. She stated that when she discovered this, she called the police who attended the property and they in turn called the fire department.

The Landlord's agent also stated that the other tenants feel uncomfortable with the number of people coming in and going and suspect the Tenant has allowed others to move in.

The agent stated that the Tenant is also harassing the upstairs tenants and threatens them. When asked to clarify, the agent stated that the Tenant knocked on the window loud and looked at the upstairs renter "scarily". She confirmed that this was the extent of the Tenant's harassing and threatening behaviour.

The Landlord submitted a copy of the notice they received from the upstairs renter, C.M. In this notice C.M. wrote as follows:

[Landlord's name], please consider this as my notice. We will be finishing our rent agreement on June 1st. I can't take [Tenant] anymore. Last two weeks, I went to visit my kids and bring some groceries and knock ad the door, while I was knocking he open his curtain in his room and knock hard on the window for like 3mins non stop. Very disrespectful. If can do something like that what else does he do while I'm not there. He smokes marijuana also. To not create anymore problem and for everybody to have peace of mind we will just leave.

Please consider this as our notice and we will end our lease agreement on June 1st..."

The agent also alleged that the Tenant threatened L.F., who was visiting the rental unit as his mother in law lives upstairs.

The agent stated that she asked the Tenant to move some of his cars from the property. He responded that if she asked him to do this, he would park his car on the most accessible part of the property to block people from even walking through the property. A copy of the text message sent by the Tenant was provided in evidence in which he wrote:

"If you want me to only have 2 vehicles parked here I will move them to be very accessible spots and it will affect parking for everyone else in the house"

The agent confirmed the above was the extent of the Tenant's harassing and threatening behaviour towards her personally.

The agent also claimed that the other renters in the basement moved out because the Tenant has been smoking cannabis in the rental unit. In support they provided photos of the cannabis and related paraphernalia on the dryer.

The Landlord's agent also stated that the Tenant has been burning garbage on the property. Introduced in evidence were photos of the fires she claimed were started by the Tenant.

The Landlord also called a witness L.F. He confirmed that his mother in law lives upstairs at the rental home. He stated that she has given notice to move out on June 15, 2020.

L.F. stated that in the second or third week of May he pulled in the driveway. He dropped off his wife and a car pulled up behind him. The Tenant was in the passenger side. L.F. stated that he put his car in reverse to indicate he wanted to back up at which time the Tenant got out of the vehicle and was yelling, screaming and swearing. He told L.F. to "f***ing drive across someone's lawn" rather than having the Tenant's girlfriend back her vehicle up into the road. L.F. stated that when the Tenant came towards the vehicle, he opened his door to stop the Tenant from coming any closer. L.F. stated that when he called the police the Tenant started yelling "you hit me". L.F. stated that the police came and took their statements and to his knowledge no one was charged.

L.F. also testified that on another occasion he could not get to his mother in law and nephew's suite because the Tenant had car parts, electrical cords, and a tent in the way. L.F. alleged the items included stolen parts and "crap everywhere". He stated that because of the previous incident he didn't want to confront him.

L.F. also described a third incident when he saw the police at the rental unit. He confirmed this was when the police arrived because the Tenant had jerry cans of gas in his unit.

The Landlord's agent also alleged the Tenant has conflict with the neighbours because he has parked his car on their lawn.

The Landlord's agent stated that the Tenant also started fires in the back yard, but claimed it was the other downstairs renter (with whom the Landlord also has concerns) who was doing the burning.

Counsel for the Landlord submitted that the Landlord's agent has tried to communicate with the Tenant about the smoking, the garbage and the parking but has not been able to resolve these issues. He stated that the Tenant denies smoking cannabis, yet, the Landlord has photos of the paraphernalia. In terms of the garbage in the yard, the Landlord's agent attempted to speak to him but he refuses to clean up.

The Agent confirmed that when they received the bylaw notices, she provided it to the Tenant. The notice related to a storage shed the Tenant had erected.

The Landlord's agent stated she does not feel that she can work with the Tenant. She feels that they have tried to solve this problem, but it is not going to work out she believes there will always be problems with him.

In response to the Landlord's allegations the Tenant testified as follows.

The Tenant denied smoking inside the rental unit.

In terms of the condition of the property the Tenant stated that his half of the property is "acceptable", but it is the other downstairs renter, J., who has accumulated garbage. The Tenant noted that when he first moved into the rental unit, he, and the other renters were able to store items in a storage shed in the back yard; however, this shed fell down, and as such there is no place to store their items. The Tenant also stated that there are 12 rooms in this quadplex and he only rents a room and is not responsible for the entire property.

In terms of the fires in the backyard, the Tenant testified that it was J's friend who burned the shed which had fallen down. The Tenant denied starting the fire which is depicted in the Landlord's evidence.

In terms of the photos of the condition of the rental unit and the Landlord's allegation that he was digging close to the water line the Tenant testified as follows. He stated that he cares for the property, including mowing the lawn and pressure washing. He stated that at the time the photos were taken he had moved all the items from the side yard to the back so that he could pressure wash the side walk. He then dug out some of the soil so that he could spread gravel to improve the side yard and so that he could place his temporary shelter in that area to store his outdoor items. He denied the yard looks like it does in the photos and stated that he tries to take care of the property for the benefit of everyone.

The Tenant also stated that when the Landlord's shed fell down, he replaced it with another shed to store outdoor items like his bike and lawnmower. He stated that the bylaw officer attended because the shed was too big for the front yard, and too close to the property line. He stated that when he was informed of this, he reduced the size of the shed and moved it away from the property line such that he is now in compliance.

In terms of the jerry cans of gas, the Tenant confirmed that when the gas prices were very low, due to COVID-19, he went out to Costco filled up a bunch of jerry cans and

put them inside. He stated that he was unaware this was a safety concern until the fire department informed him.

In terms of the incident with L.F., the Tenant testified that the incident occurred because L.F. wanted his girlfriend to back out onto a busy street, rather than turn the car around on the grassy area (which he says most people do as a result of not wanting to back onto the street). The Tenant stated that there is a large parking area with obvious spots, but the way L.F. was parked blocked two other vehicles. The Tenant further stated that L.F. almost backed into them which is why he got out of the car. The Tenant claimed he asked L.F. to drive on the grass and L.F. was honking and yelling. The Tenant stated that L.F. then opened his car door with both hands and hit the Tenant with the car door. The Tenant alleged it was L.F. who was in the wrong for assaulting him with the door.

In response to the witness' testimony that he felt threatened and intimidated the Tenant stated that he is only 140 pounds and is not a violent or aggressive person.

In terms of the upstairs renter, the Tenant denied being harassing or threatening in any way towards her. He admitted he knocked on the window when the upstairs renter was loudly knocking on the door but denied looking at her "scarily". He stated that he did so as she was knocking repeatedly on the door. The Tenant conceded that he and the upstairs renter have issues but stated that he believes they only complained about him as he complained about their excessive noise. The Tenant also claimed that the upstairs renters leave garbage on their back porch which attracts rats to the rental property.

In response to the Landlord's allegation that the other downstairs renters moved out due to his smoking, the Tenant stated that the reason why his roommates move out was the noise from upstairs tenants and J.'s garbage outside, not anything he did.

Although the Landlord's agent did not testify regarding the allegation that he put a hole in the ceiling, the Tenant stated that he did not make the hole in the ceiling. He also stated that he has done everything he can to make this a nice place to live and he does not get any appreciation.

In reply the Landlord's agent stated that the fire was not started by the other downstairs renter, J., it was the Tenant and his girlfriend.

Analysis

The Landlord seeks an early end to tenancy pursuant to section 56 of the *Act*, which provides that a tenancy may be ended early if the Landlord proves, on a balance of probabilities that the Tenant has

- significantly interfered with the Landlord or another occupant of the residential property;
- seriously jeopardized the health or safety or lawful right or interest of the Landlord or another occupant;
- put the Landlord's property at significant risk;
- engaged in illegal activity that
 - has damaged or is likely to damage the Landlord's property,
 - has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
 - has jeopardized a lawful right of another occupant or the Landlord; or
 - caused extraordinary damage to the residential property

and it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect.

The Landlord must not only prove the reasons for ending the tenancy as set out above, but also that it would be unreasonable or unfair to the Landlord or other occupants to wait for a 1 Month Notice to End Tenancy for Cause to take effect. The reason for this secondary requirement is that a Landlord has the option to issue a 1 Month Notice to End tenancy for Cause pursuant to section 47; however, a request under section 56 requires the Landlord prove urgency to their request.

In this case, the evidence from both sides shows that this is a problematic tenancy. The Tenant has conflict with the upstairs renter, who has given her notice to move out. The Tenant appears to also have conflict with the neighbours. The latter is not relevant to an application pursuant to section 56 of the *Act* which specifies the Tenant's actions must impact the *Landlord* or other *occupants* of the rental property.

Documentary evidence submitted by the Tenant indicates that he has complained about the noise from the upstairs renters. The Landlord alleged the Tenant threatened the upstairs renter. In particular, she described how the Tenant allegedly knocked continuously on the window and looked at the upstairs renter “scarily”. A text message from the upstairs renters confirms this was her experience. The Tenant admits he knocked on the window but denies doing so in a threatening way. While this is an unfortunate continuation of the conflict between the two units, I find this insufficient to support a finding that the Tenant has harassed or threatened the upstairs renter as alleged by the Landlord.

The Landlord called a witness (the upstairs renters’ son in law) who described an altercation with the Tenant over parking. Parking appears to be an issue at this rental unit, likely in part due to the fact there are four separate units, and numerous people sharing the property. In any event, the witness and the Tenant described the altercation from their own perspective and not surprisingly each blame the other. The witness describes how he attempted to back out of the driveway and was blocked in by the Tenant’s girlfriend. He admits he put his vehicle in reverse to indicate to the vehicle behind him his intention to back up. The Tenant testified that he believed the witness was going to back into their car. Both allege the other started yelling at the other. The Tenant says that when he got out to discuss this with the witness the witness opened both doors of his vehicle and struck the Tenant. The Tenant says it was unreasonable for his girlfriend to back out onto the busy street abutting the rental unit. The witness says the Tenant’s suggestion that he turn around on the lawn was equally unreasonable.

On balance I find it likely both the witness and the Tenant raised their voices. However, given the Tenant’s demeanour during the hearing, I prefer the witness’ testimony over that of the Tenant’s. The Tenant stated that he feared the witness was going to back into his vehicle and likely was fearful of this. The Tenant was also concerned about his girlfriend backing onto a busy street. In all the circumstances, I find it more likely the Tenant was more aggressive in this altercation.

The Landlord’s agent also testified how she has difficulty dealing with the Tenant. In this respect, she testified that he threatened to block access to the property if she only allowed him to park two of his four vehicles. The text message sent by the Tenant to the agent indicates he was referring to *parking* access, not physical access to occupants. The Tenant alleges the Landlord’s agent does not attend to required repairs and did not respond to his concerns about the noise from the upstairs renters. In written submissions provided by the Landlord, they allege the Tenant has refused access to the

rental unit such that they cannot rent out the other bedrooms. The Tenant responded that he does not believe he has to give access to the rental unit during the COVID-19 pandemic. In any case, it is clear the agent has difficulty communicating with the Tenant.

The Landlord also alleged the Tenant has put the property at significant risk. In this respect the Landlord described how in mid May 2020 the Tenant stored six jerry cans of gasoline in one of the bedrooms in the lower unit. The Tenant admitted he did this, claiming he was unaware this was considered a safety risk. He also stated that since the shed in the back yard fell, he hasn't had a secure place to store outdoor items.

I accept the Tenant's testimony that he was unaware that storing gasoline inside a home is a safety risk. I find that he did so without any malintent, however this clearly put the property at significant risk.

The Landlord also alleged the Tenant stores items in the backyard in such a manner as to block other renters' access to their units. The photos submitted by the Landlord show items such as coolers, tarps, a lawnmower and other items which presumably would be stored in a shed. On balance, I accept the Tenant's testimony that the items depicted in the landlord's photos were moved so that he could pressure wash the walk way and make way for a replacement storage shed.

The Landlord alleged the Tenant started fires on the property. The Tenant testified it was a friend of the other renter, J., who started the fires which included the shed which fell down on the property. When the Landlord's agent discussed this issue, she intimated there was an issue with the other renter and the manner in which he keeps "his side" of the outdoor area. It appears both the Tenant and the other downstairs renter, J., are collecting and storing items in the backyard in an unsightly manner. On balance, I am unable to make a finding that it is the Tenant who is solely or largely responsible for this situation; more importantly, I am unable to find this has put the Landlord's property at significant risk.

In terms of the other allegations, I find the Landlord has submitted insufficient evidence to support a finding that the Tenant smokes inside the rental unit. The Tenant denied smoking in his rental unit. While cannabis is stored in the laundry room, this does not prove the Tenant smokes within his rental unit as alleged by the Landlord.

I also find the Landlord has failed to prove the Tenant has allowed others to move into the extra bedrooms in the downstairs rental unit. The Tenant testified that they are

empty, and the Landlord failed to submit any evidence to support a finding the Tenant has allowed others to move in.

In written submissions the Landlord alleged the Tenant damaged the ceiling of the rental unit. During the hearing the agent gave no testimony in this regard. The Tenant denied making such a hole. On balance I find the Landlord has failed to prove the Tenant damaged the rental unit.

Based on the evidence before me, I find the Landlord has failed to prove the Tenant threatened or harassed the upstairs renter. Although he admitted to knocking on the window, I find this does not constitute harassment or threatening behaviour. Further, although I have found the Tenant was more aggressive in the situation with L.F. over parking, and this situation may give rise to an end to the tenancy pursuant to section 47, I am not satisfied this situation warrants an *early* end to this tenancy. It appears the primary conflict with the Tenant is with the upstairs renter who has given her notice to end her tenancy effective June 15, 2020. As such, any issues with the Tenant and the upstairs renter L.F. will hopefully cease once the upstairs renter is no longer living at the rental property.

Based on the evidence before me I am unable to find the Tenant started the fires on the rental property or that the Tenant damaged or is likely to damage the Landlord's property. I accept the Tenant's evidence that the material being burned was the outside shed which fell down during a windstorm. I am unable to determine who started the fire; it is equally possible it was the Tenant and it is equally possible it was J. and as a result I find the Landlord has failed to meet the burden of proving on a balance of probabilities that it was the Tenant who started these fires.

I also find that the loss of use of an outdoor storage shed has created a situation whereby the Tenant is attempting to create storage for his lawnmower and other outdoor items. I accept his testimony that he pressure washed the walkway and cleared the area for shed. I am not satisfied, based on the evidence before me, that in doing so he put the Landlord's water supply at risk.

I accept the Tenant's testimony that he corrected the size and location of his temporary shed such that he is in compliance with the municipal bylaw.

On balance I find the Landlord has met the first part of the test in section 56, as I find the Tenant has significantly interfered with the Landlord's agent. I find that the Tenant does not respectfully communicate with her and interferes with her ability to manage the

property. I also find the Tenant seriously jeopardized the health and safety of the other occupants of the rental unit by storing gasoline in the rental property; in doing so, I find the Tenant also put the Landlord's property at significant risk.

Despite these findings, I am not satisfied the Landlord has met the second part of the test in section 56 of the *Act*; namely that it would be unreasonable or unfair for the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect.

While the Tenant and the Landlord's agent do not communicate effectively, and the Landlord likely has cause to end this tenancy pursuant to section 47 of the *Act*, I am not satisfied this situation warrants an *early* end to this tenancy. I also find the Tenant is now aware that storing gasoline inside a residential home is dangerous; I have no reason to believe this is an ongoing or imminent threat. Again, while this may constitute cause to end this tenancy pursuant to section 47, I am not satisfied it meets the urgency requirement of the second part of the test in section 56. As such, I dismiss the Landlord's request for an early end to this tenancy.

As the Landlord's application was unsuccessful, they are not entitled to recovery of the filing fee for the cost of his application.

Conclusion

The Landlord's application is dismissed, with the effect that the 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: June 10, 2020

Residential Tenancy Branch