



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- An early end to the tenancy pursuant to section 56 of the *Act*; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, a witness for the Landlord (the “Witness”), and the Tenant K.D., all of whom provided affirmed testimony. The Tenant K.D. confirmed service of the Notice of Dispute Resolution Proceeding Package and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary Matters

Preliminary Matter #1

During the hearing the Tenant K.D. raised concerns that the Notice of Dispute Resolution Proceeding Package and the Landlord’s documentary evidence were not served on them and the Tenant D.P. in accordance with the timelines set out in the Residential Tenancy Branch Rules of Procedure as they only received it by email on June 8, 2020, 10 days before the hearing.

The Landlord applied for an expedited hearing and rule 10.3 of the Rules of Procedure states that applicants for expedited hearings must serve respondents with the Notice of Dispute Resolution Proceeding provided to them by the Residential Tenancy Branch (the “Branch”), which includes the Application for Dispute Resolution, the Respondent Instructions for Dispute Resolution, the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Branch; and all evidence submitted to the Branch with the Application, within one day of the Notice of Dispute Resolution Proceeding Package being made available to them by the Branch.

Branch records show that the Landlord filed their Application and paid the filing fee on May 26, 2020. Branch records also show that the Notice of Dispute Resolution Proceeding Package was sent to the Landlord by email, as per their request, on May 28, 2020. As a result, I find that the Landlord was required to serve the above noted documents on the Tenants no later than 11:59 P.M. on May 29, 2020, under the Rules of Procedure.

I asked the Landlord why there was an 8 day delay in service, and the Landlord stated that the email originally went into their spam folder and that it was not until they contacted the Branch regarding not receiving the Notice of Dispute Resolution Proceeding Package that they became aware that it had already been sent and located it in their spam folder. The Landlord stated that they then sent it immediately to the Tenants.

In their Application the Landlord requested correspondence by email and provided an email address for that purpose. As a result, I find that it was incumbent upon the Landlord to be diligent in checking their email for the Notice of Dispute Resolution Proceeding Package, including checking any spam or other sub-folders. As a result, I find that it was the Landlord's own lack of due diligence that resulted in the delay and the breach of rule 10.3 of the Rules of Procedure. However, in the hearing the Tenant acknowledged that they had time to review and consider the Landlord's Application and documentary evidence and that there was no documentary or other evidence that they were prevented from gathering or submitting for my review as a result of the delay.

I am mindful that the Rules of Procedure exist to assist the parties and the Branch in ensuring that the dispute resolution process is fair, efficient, and transparent as required by the principles of natural justice. One of the fundamental principles of natural justice is that a party is entitled to know the case against them and to have an opportunity to respond in their defense. Given the Tenant's testimony that they have had time to review and consider the Landlord's Application and evidence, and the fact that they do not require additional time to gather or submit documentary or other evidence for my review, I therefore find that there has been no breach of the principles of natural justice as a result of the delay and that the Tenants have not been unreasonably prejudiced as a result. The hearing therefore proceeded as scheduled.

Preliminary Matter #2

Although the Tenant denied receipt of the photographic evidence submitted to me for consideration by the Landlord, they stated that they are confident that the photographs are accurate and therefore took no issue with their acceptance and consideration.

Based on the above, I therefore accepted the photographs submitted by the Landlord for consideration in this matter. The Witness was also excluded from the proceedings except when present to provide testimony.

Preliminary Matter #4

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to end the tenancy early pursuant to section 56 of the *Act*?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that a residential tenancy under the *Act* exists between the Landlord and the Tenants, that the Tenants rent a single family home from the Landlord, that the Landlord and the Witness reside on the same residential property in a home located directly next to the rental unit, and that the rental unit, the Landlord's residence, and the Witnesses' rental unit all share the same electricity meter.

Although the Landlord initially denied that electricity was included in rent, ultimately, they acknowledged that neither the entire electricity bill nor a portion thereof, was ever charged to the Tenants, and that when the electricity bill was received, the Landlord paid it themselves once they received rent from the Tenants and the Witness. Although there was a dispute about the current rent due each month and how much, if any, rent

was currently outstanding, the parties agreed that rent at the start of the tenancy was \$1,200.00, due on the first day of each month.

The parties agreed that the Tenants' electricity had been disconnected, causing several incidents between the Tenants and the Landlord as well as the Tenants and the Witness' child. The Landlord stated that the Tenants electricity was disconnected as the Tenants did not pay rent, which is what they use to pay the electricity bill, and that they were therefore unable to pay the bill. The Landlord stated that the Tenants called the police as a result of the power disconnection and that when the Tenants called them requesting that the power be turned back on, the Landlord requested that they communicate with them by email instead due to their ongoing issues and advice they received from their lawyer. The Landlord stated that the Tenants then threw items from their refrigerator at their front door and onto their porch and threatened to harm the Witness. As a result, the Landlord stated that the Tenants have significantly interfered with and unreasonably disturbed both them and the Witness, who is also an occupant of the residential property as they rent the basement suite of the Landlord's house, that the Witness and their child no longer feels safe, and that they are therefore seeking an early end the tenancy pursuant to section 56 of the *Act*.

The Witness stated that they are worried that the Tenants will damage their property after their son and their son's friend were advised by the Tenants that they would break down the Witness' door if the Witness was involved with the disconnection of their power and that they would be "in a world of hurt". The Witness stated that their son also received a threatening message from the Tenants on social media and that although they are not pointing fingers, their son's gas tank was filled with sugar, which they find suspicious.

The Tenant denied that they or the Tenant D.P. threatened to harm the Witness or break down their door or that they damaged the Witness' son's vehicle. The Tenant stated that although there was a heated conversation between them and the Witness' son, they only stated that they would add them to their ongoing legal actions if they were involved in the power disconnection, not that they would harm them or their property. As a result, the Tenant stated that this is a big misunderstanding. The Tenant also denied sending a threatening message on social media and although a copy of the message sent was not before me for consideration, the Tenant read it out during the hearing.

The Tenant acknowledged throwing items from their fridge and freezer onto the Landlord's porch and at the Landlord's door but stated that this was an isolated incident

and that they were simply upset at their power disconnection and the Landlord's refusal to speak with them on the phone. The Tenant stated that there had been two incidents over the last year where guests of the Landlord had used their power, either tripping their breaker while they were out of town or unplugging their freezer, which had resulted in the spoilage of approximately \$1,200.00 of food. The Tenant stated that the Landlord has also failed to do required repairs or had them completed so poorly that they required re-repair. The Tenant stated that when the power was disconnected, their food spoiled again and they were simply frustrated by the situation and the Landlord's lack of action or willingness to speak with them.

Analysis

While the Landlord and the witness stated that the Tenant D.P. threatened to break down the Witness's door if they were involved in the disconnection of the Tenants' power, it is clear from the testimony of the parties in the hearing that neither the Landlord nor the Witness were present during the incident where these threats were allegedly uttered. It was the Witness' son and their son's friend who were present during the incident, neither of whom appeared in the hearing or provided any documentary evidence or testimony for my consideration. Further to this, the Tenant K.D., who was present during the incident, denied that any threat to break down the door or otherwise harm the Witness or their property was uttered.

As this is the Landlord's Application, I find that they bear the burden of proof in this matter pursuant to rule 6.6 of the Rules of Procedure. Given that the actual witnesses to the incident where threats were allegedly uttered by the Tenants against the Witness were not present in the hearing, and did not provide any evidence or testimony for my consideration, and the fact that the Tenant K.D. denied that threats of violence or property damage were uttered, I find that I am therefore not satisfied on a balance of probabilities by the Landlord or their Witness that this occurred. Although I agree that the Tenant K.D. sent the Witness' son a message over social media that I would characterise as discourteous in nature, I do not find this message threatening nor do I find that it constitutes either a significant interference or an unreasonable disturbance to another occupant of the residential property under the *Act*.

Although I am satisfied that the Tenants threw items from their fridge onto the Landlord's porch and that this incident constitutes an unreasonable disturbance to the Landlord which may well constitute reasonable grounds to end the tenancy under section 47 (d) (i) of the *Act*, section 56 of the *Act* requires considerably more than mere satisfaction that a breach of the *Act* occurred, which would constitute a valid ground for

ending the tenancy under section 47 of the *Act*. It requires that I also be satisfied that 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 Landlord made arguments that it would be unreasonable, or unfair to them or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect, these arguments focussed primarily on the Landlord's position that the Tenants had threatened violence against the Witness and a lack of rent payments. As I have already found that I am not satisfied that any threats of physical harm or property damage were uttered by the Tenants, I do not find that the one isolated incident described above constitutes a valid reason for ending the tenancy pursuant to section 56 of the *Act*. I am also not satisfied that any lack of rent payments, should they exist, make it somehow unreasonable or unfair for the Landlord to wait for a One Month Notice to take effect as the grounds for ending the tenancy pursuant to section 56 are entirely unrelated to the payment of rent.

As a result, the Landlord's Application seeking an early end to the tenancy pursuant to section 56 of the *Act* is dismissed without leave to reapply. The Landlord remains at liberty to serve a One Month Notice to End Tenancy for Cause in relation to this incident once the ban on the issuance of such notices to end tenancy is lifted, should they wish to do so.

As the Landlord's Application seeking to end the tenancy early pursuant to section 56 of the *Act* was dismissed, I decline to grant them recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed, in its entirety, without leave to reapply.

As a result, I order that the tenancy continue in full force and effect until it is ended by one of the parties 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 22, 2020

Residential Tenancy Branch