



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 in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An order ending the tenancy early and an order of possession - Section 56;
and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms receipt of the Landlord’s application, notice of hearing and evidence.

Preliminary Matter

The Parties agree to amend the application to remove the Respondent identified as Tenant LB as this person is no longer a tenant or occupying the unit. Given these agreed facts I amend the application to remove Tenant LB as a Respondent.

Facts

The following are agreed facts: The tenancy of an upper suite in a house, with a lower suite rented separately to another tenant, started on July 14, 2019. In mid January 2019 Tenant LB moved out of the unit and by verbal agreement the Landlord entered into a tenancy agreement with Tenant NC. Rent of \$2,200.00 is payable on the first day of each month.

The Landlord states that the tenant in the lower suite has complained about constant noise and parties throughout March 2020 and ongoing. The Landlord states that the police were called multiple times by the lower tenant. The Landlord states that it called the police once. The Landlord states that no charges were laid. The Landlord refers to videos submitted as evidence to support that excessive noise was occurring. The Tenant denies having parties or making excessive noise.

The Landlord states that the Tenants have created a fire risk by unsafely using a raised area at the back of the house for a barbeque and table. The Landlord states that these items were discovered a few days before this hearing. The Landlord states that it has no evidence to support that the presence or use of the barbeque is a fire hazard. The Landlord states that the table is dangerous as there is no railing around the area that is an emergency exit. The Landlord states that nothing in the original tenancy agreement restricts the Tenant from using this area. The Tenant states that at the onset of the original tenancy the Landlord gave the Tenants permission to place a table in the area and that the Landlord never informed the Tenant of any restrictions on the use of the area.

The Landlord states that the Tenant is smoking in the unit and that this is causing the lower tenant's child to wake up coughing. The Landlord has no medical evidence to support any medical problems caused by the smoking.

The Landlord states that when it made its application it was not scheduled as an emergency hearing as the Landlord's application did not meet the criteria. The Landlord states that it cannot serve a notice to end tenancy for cause due to the state of emergency and the restrictions on ending tenancies during the emergency. The Landlord seeks to withdraw its application due to insufficient evidence to support the urgent nature of the application. The Tenant asks that the matter be resolved at this hearing. The Parties agree that the tenancy will end on July 31, 2020 and that the

Landlord has an order of possession for that date. The Landlord provides the file number for the decision that grants the order of possession and this is set out on the cover page of this decision.

Issue

May the Landlord withdraw its application or is the Tenant entitled to its dismissal?

Analysis

Section 56(2) of the Act provides that the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) 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, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) 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.

Section 62(4)(a) of the Act provides that the director may dismiss all or part of an application for dispute resolution if there are no reasonable grounds for the application or part. While the Landlord has provided evidence of noise and noting that some videos were unable to be opened, those that were able to be opened do not show excessive noise as the audio depicts normal talking voices and conversation. Given the Tenant's evidence of no noise or disturbance I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused significant interference or unreasonable disturbance. Given the lack of any medical evidence I find that the Landlord has not sufficiently substantiated that there is any medical or other emergency related to the complaints of smoking. Given the Tenant's undisputed evidence that the Landlord verbally informed the Tenant that it could have a table on the back raised area and as there is no evidence that anything in the original tenancy agreement or the subsequent verbal tenancy that sets out any such restrictions I find that the Landlord has not substantiated that the Tenant is using the unit in a dangerous manner. There is no supporting evidence of the barbeque creating a significant risk to the property and there is no evidence that there was any restriction placed on the Tenant for the use of either a barbeque or the use of the area. I find therefore that the Landlord has not substantiated a significant risk to the property by the presence of the barbeque. Even if the Landlord provided sufficient evidence to end the tenancy for cause, there is no evidence of any emergency. An inability to serve a one month notice to end the tenancy for cause due to the state of emergency is not relevant to the burden of proof required to establish an emergency end of the tenancy.

For the above reasons I find on a balance of probabilities that the Landlord has not substantiated that there are any reasonable grounds for the early end of the tenancy. given these findings I decline to accept the Landlord's request to withdraw its application and I dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

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: June 22, 2020

Residential Tenancy Branch