



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 June 02, 2020 (the “Application”). The Landlords applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlords also sought reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenants did not appear at the hearing. I explained the hearing process to the Landlords who did not have questions when asked. The Landlords provided affirmed testimony.

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

Landlord C.G. testified that two packages containing the hearing package and evidence were given to Tenant N.B. in person at the rental unit on June 03, 2020. Landlord C.G. testified that Tenant N.B. agreed to accept the package for Tenant J.L. The Landlords submitted Proof of Service documents signed by both confirming service.

Based on the undisputed testimony of Landlord C.G. and the Proof of Service documents, I find the Tenants were served with the hearing packages and evidence in accordance with sections 88(a), 88(e), 89(2)(a) and 89(2)(c) of the *Act*. I also find the Landlords complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral

testimony of the Landlords. 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 pursuant to 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 as evidence. The tenancy started April 01, 2020 and is for a fixed term ending June 30, 2020. Rent is \$1,400.00 per month due on the first day of each month. The Tenants paid a \$700.00 security deposit. The agreement is signed by the Landlords and Tenants.

Landlord C.G. explained that the rental unit is a mobile home on the Landlords' property. Landlord C.G. said the rental unit and Landlords' residence share a driveway.

Landlord C.G. testified as follows. The Tenants have broken windows in the rental unit. Tenant N.B. has broken windows on vehicles on the property. Tenant N.B. has threatened to harm herself. Tenant N.B. approached the Landlords' residence after being given written warning not to do so. There have been noise complaints from neighbours because of the Tenants screaming and yelling.

Landlord C.G. said the Landlords are relying on text messages from Tenant J.L. to show there has been damage done to the rental unit and that they have not attended the rental unit to confirm the damage. Landlord C.G. testified that the Landlords are scared to go down to the rental unit. Landlord C.G. testified that police told her a bedroom door was laying in the kitchen when they attended the rental unit.

In relation to Tenant N.B. breaking windows of vehicles, Landlord C.G. testified that she broke windows on Tenant J.L.'s van and car. She testified that she saw one of the windshields broken. Landlord C.G. testified that she has video of Tenant N.B. admitting to breaking the windshield; however, this was not submitted.

In relation to Tenant N.B. approaching the Landlords' residence after being given written notice not to do so, Landlord C.G. testified as follows. The Tenants were served a 30-

day eviction notice on June 02, 2020. Tenant N.B. had previously banged on the Landlords' door in the middle of the night and asked to use their phone. The Tenants were told in the 30-day eviction notice not to approach the Landlords' residence. Tenant N.B. immediately came up to the residence. When the Landlords served the hearing package and evidence, Tenant N.B. stood in front of their truck and then followed them up to their residence.

I asked the Landlords what Tenant N.B. did when she approached them, or their residence, and Landlord C.G. replied that Tenant N.B. asked for an explanation of the paper work.

I explained to the Landlords the two-part test set out in section 56 of the *Act* and asked what sections they were relying on in relation to the first part of the test. Landlord C.G. submitted that the Tenants have done all the things outlined in section 56(2)(a) of the *Act*. I asked Landlord C.G. to explain how. Landlord C.G. testified that the Tenants have disturbed the Landlords, damaged the rental unit and she assumes have been involved in drug use.

Landlord C.G. testified that the Landlords feel scared for their own health and safety. I asked the Landlords to explain why. Landlord C.G. said "because she is crazy" in relation to Tenant N.B. Landlord C.G. also said this is because of how Tenant N.B. communicates including yelling and screaming about harming herself, being aggressive and being overbearing.

I asked the Landlords to explain why it would be unreasonable or unfair to require them to deal with the issues raised through a One Month Notice. Landlord C.G. testified that the Landlords are fearful for themselves, their residence and the rental unit. Landlord C.G. testified that the police attended five times in ten days because Tenant N.B. was banging on their door for help and threatening to harm herself, Tenant N.B. would not leave their property after they asked her to, Tenant J.L. called them for victim assistance and because Tenant N.B. smashed a window and threatened to harm herself.

Landlord J.N. testified that she does not feel safe walking to check the mail anymore because of the Tenants.

The Landlords submitted a word document with a police file number and date noted on it, a notice to the Tenants dated June 02, 2020 and text messages from the Tenants.

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 that it is more likely than not the facts occurred as claimed.

In the absence of further evidence, I am not satisfied Tenant N.B. has broken windows or doors in the rental unit. I would expect the Landlords to have attended the rental unit and checked on this if they were concerned about damage to the rental unit. I am not satisfied that the Landlords are scared to attend the rental unit as they attended the rental unit to serve the hearing package and evidence. The Landlords could have checked on the state of the rental unit at the same time.

I am not satisfied neighbours have complained about noise from the Tenants or rental unit. The Landlords have not submitted evidence to support this testimony such as written complaints from neighbours, text message complaints from neighbours, email

complaints from neighbours or witness statements from neighbours about this issue. This is the type of evidence I would expect to see if neighbours have complained about noise from the Tenants or rental unit.

I am not satisfied the Tenants are involved in illegal drug use. The only evidence on this point is Landlord C.G.'s testimony that she assumes this is the case. This is not sufficient evidence to prove illegal activity.

It may be that Tenant N.B. has broken windows on Tenant J.L.'s vehicles. A text message from Tenant J.L. in evidence supports this. I do however have some concerns about the lack of further evidence on this point. Again, this is something I would expect some photo or video evidence of, or a witness statement from Tenant J.L. about. The Landlords testified that they have a video of Tenant N.B. admitting to doing this, yet this was not submitted in evidence.

It may be that Tenant N.B. has threatened to harm herself, although there is no other evidence submitted to support this testimony.

I accept that the Tenants were given notice about not approaching the Landlords' residence on June 02, 2020 as this notice is in evidence. It may be that Tenant N.B. did approach the Landlords to ask for an explanation about the June 02, 2020 notice and hearing documents; however, again, no further evidence has been submitted to support that this occurred.

In relation to the Landlords feeling scared for their own health and safety, I accept based on the text messages submitted that the Tenants have a tumultuous relationship. However, I am not satisfied based on the evidence provided that Tenant N.B. is aggressive towards the Landlords. There is no documentary evidence submitted that supports this. Further, the text messages in evidence between the Tenants and Landlords seem to show that the Tenants get along with the Landlords.

I do not accept that Tenant N.B. threatening to harm herself somehow threatens the health and safety of the Landlords. I do understand how this could be concerning or cause stress and accept that it could amount to an interference or disturbance. However, I am not satisfied in the absence of further evidence that the Landlords' health or safety is put at risk because of this.

In the circumstances, I am not satisfied the Tenants have jeopardized the health or safety of the Landlords. The evidence simply does not support this.

In relation to the police attendance, I only have a typed word document indicating one police file number and a date. I do not have further details about the incidents. Further, the police attendance seems to be due to the issues between the Tenants for the most part.

I am satisfied that Tenant N.B. threatening to harm herself, breaking windows on Tenant T.L.'s vehicles, approaching the Landlords to ask about paperwork despite being asked not to come onto their property and behaving in a manner that has resulted in police attendance on the property does amount to a significant interference or unreasonable disturbance of the Landlords who live on the same property. I am satisfied these issues have a negative impact on the Landlords and their enjoyment of their property. I am not satisfied any of the other sections of section 56(2)(a) have been proven.

However, even accepting that Tenant N.B. has done the things noted in the above paragraph, despite the issues with the evidence provided as noted above, I am not satisfied it would be unreasonable or unfair to require the Landlords to deal with these issues through a One Month Notice.

Although the issues between the Tenants may be serious, I am not satisfied based on the evidence provided that the issues between the Tenants and Landlords are serious enough to warrant ending the tenancy on an urgent basis. I am not satisfied the Tenants pose a health or safety threat to the Landlords. Nor am I satisfied that the interferences or disturbances are so serious as to warrant ending the tenancy without issuing the Tenants a One Month Notice. I note that the only documentary evidence provided showing the Landlords have raised an issue about ending the tenancy with the Tenants is the June 02, 2020 notice. This notice does not set out any of the above issues or even what the issues are.

In the circumstances, I am not satisfied the Landlords have proven the circumstances meet the two-part test set out in section 56 of the *Act*. Therefore, I decline to issue the Landlords an Order of Possession

Given the Landlords were not successful in the Application, I decline to award them 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: June 29, 2020

Residential Tenancy Branch