



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 Landlord on June 11, 2020 (the “Application”). The Landlord applied for an order ending the tenancy early pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

Tenant M.L. confirmed receipt of the hearing package June 13 or 14, 2020 in person. Tenant M.L. testified that there was no evidence in this package and that the Tenants received the Landlord’s evidence June 22, 2020 in person.

The Agent testified that some of the evidence was served on the Tenants with the hearing package June 13 or 14, 2020 and some was served June 22, 2020.

The Landlord submitted Proof of Service documents in relation to the June 22, 2020 service.

The Landlord had submitted two doctor’s notes, one complete note and one vetted note. The Agent confirmed the complete note was not served on the Tenants and only the vetted note was as the complete note contains confidential information.

The Agent testified that the Landlord did not receive the Tenants' evidence. Tenant M.L. testified that the evidence was served on the Landlord in person June 29, 2020. Tenant K.L. testified that she witnessed this.

I told the Agent I was not satisfied based on his testimony alone that the Landlord did not receive the Tenants' evidence and asked if the Agent wanted to call the Landlord into the hearing to provide testimony about this. The Agent said he did not wish to call the Landlord into the hearing.

The Agent took issue with the timing of service of the Tenants' evidence.

The Rules of Procedure (the "Rules") outline service requirements.

Pursuant to rule 3.1 of the Rules, the Landlord was required to serve the hearing package and evidence on the Tenants within three days of the hearing package being made available by the RTB.

Pursuant to rule 3.14 of the Rules, the Landlord was required to serve any evidence not served with the hearing package on the Tenants not less than 14 days before the hearing.

Pursuant to rule 3.15 of the Rules, the Tenants were required to serve their evidence on the Landlord not less than 7 days before the hearing.

Pursuant to rule 3.17 of the Rules, evidence not served in accordance with the Rules may or may not be considered. Rule 3.17 states:

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Pursuant to the definitions section of the Rules, in calculating "not less than", the first and last days must be excluded.

The rules about service relate to procedural fairness. Parties must know what evidence the other party is relying on so that they can respond to it if necessary. Further, parties must have enough time to review evidence so that they can respond to it.

The hearing package was made available to the Landlord June 12, 2020. I am satisfied the Landlord complied with the Rules in relation to the timing of service of the hearing package.

I am not satisfied the Landlord served evidence on the Tenants prior to June 22, 2020. The parties provided conflicting testimony on this point. There is no documentary evidence before me that supports either position. The only documentary evidence of service before me relates to the June 22, 2020 date. The Landlord has the onus to prove service of their evidence. In the absence of further evidence, the Landlord has failed to do so.

I am satisfied the Tenants received the Landlord's evidence June 22, 2020 as the Tenants acknowledged this. This date does not comply with rule 3.14 of the Rules as it is not 14 days before the hearing when the first and last date are not calculated. It is only 13 days before the hearing.

Pursuant to rule 3.17 of the Rules, I admit the Landlord's evidence for the following reasons. The amount of evidence is minimal. The Landlord failed to comply with the Rules by one day. I am satisfied the Tenants had time to review and respond to the Landlord's evidence because they did so and submitted their own evidence. I am not satisfied it would be unfair to admit the evidence in the circumstances.

However, I only admit the vetted doctor's note and not the complete doctor's note. This is because the complete doctor's note was not served on the Tenants. The Landlord was required to serve all evidence they wished to rely on at the hearing on the Tenants pursuant to rule 3.1 and 3.14 of the Rules. As stated, service requirements ensure procedural fairness. I exclude the complete doctor's note pursuant to rule 3.17 of the Rules. I find it would be unfair to the Tenants to consider evidence they have not seen and therefore could not respond to. It is not relevant that the information is confidential. If the Landlord wanted it considered, the Landlord was required to serve it on the Tenants. The Landlord did not do so and therefore it will not be considered.

I am satisfied based on the testimony of the Tenants that their evidence was served on the Landlord in person June 29, 2020. I am not satisfied based on the Agent's testimony alone that the Landlord did not receive this evidence as the Agent is not the Landlord. I gave the Agent the opportunity to have the Landlord call into the hearing to provide testimony on this point and the Agent chose not to do so. In these circumstances, I am satisfied the Tenants have proven service of their evidence.

I am not satisfied the Tenants complied with rule 3.15 in relation to the timing of service as the evidence was served six days before the hearing. However, I admit the evidence pursuant to rule 3.17 of the Rules for the following reasons. The Tenants submitted two letters as evidence. The letters are one page each. The amount of evidence is minimal. I find six days to review two pages of evidence more than enough. The Landlord did not appear at the hearing to take issue with the timing of service. The evidence was served one day late. The Landlord also served their evidence one day late and it has been admitted. In the circumstances, I am not satisfied it would be unfair to the Landlord to admit the Tenants' evidence.

In summary, all evidence is admitted other than the complete doctor's note which was not served on the Tenants.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted in evidence. The parties agreed the tenancy started in 2013 but that the written agreement in evidence was the latest written agreement. It was for a fixed term starting January 01, 2020 and ending March 31, 2020. The parties agreed the tenancy then became a month-to-month tenancy.

The Landlord sought an Order of Possession pursuant to section 56 of the *Act* based on an incident May 27, 2020 where the Agent testified that he caught Tenant M.L. smoking marijuana on the property. The Agent testified that Tenant M.L. smoking marijuana on the property had been an issue previously and the parties signed a written agreement May 04, 2019 stating that the Tenants would not smoke marijuana on the property. The Agent confirmed the Application is based on the one further incident May 27, 2020 of Tenant M.L. smoking marijuana on the property.

The Agent testified about the May 27, 2020 incident stating as follows. Tenant M.L. was smoking in an area of the property that does not have cameras. He saw Tenant M.L. smoking marijuana and saw him flick the cigarette when the Agent approached. The Agent testified that his wife smelled the marijuana smoke in their residence which is above the rental unit.

The Agent testified that Tenant M.L. smoking marijuana on the property made him miss work and made it difficult to work. The Agent testified that the Tenants breaching the written agreement in relation to not smoking marijuana on the property is affecting his health and is stressful for his family. The Agent testified that the behaviour affects his children. The Agent testified that Tenant M.L. is irrational, almost threatening and says things in a passive aggressive way when confronted about the smoking issue. The Agent testified that this is stressful for his family.

The Agent testified that he previously found a pipe on the property which his child could have found.

The Agent raised an issue about the fixed term tenancy becoming a month-to-month tenancy and how this affects insurance claims.

The Agent testified that the Tenants have damaged the property by slamming doors which has resulted in a broken lock.

The Agent raised an issue about the Tenants getting into a fight and one of the Tenants threatening to call the police in relation to the other.

Tenant M.L. denied that he smoked marijuana on the property on May 27, 2020. He denied that the Agent saw him flick a cigarette as claimed. He acknowledged that the Agent's wife may have smelled marijuana from him smoking off of the property but denied he was on the property while smoking.

The Tenants raised an issue about the claim that the property needs to be a smoke-free environment because the Agent's sister smokes cigarettes on the property.

The Tenants testified that they have abided by the May 04, 2019 agreement about not smoking on the property.

In reply, the Agent testified about his sister planning to move. I did not understand the Agent to dispute that his sister smokes on the property.

The Landlord submitted the following relevant evidence. Documentary evidence of being sick at work May 27, 2020 and absent from work May 28, 2020. A doctor's note stating that the Agent and his family require a smoke free home. A statement from R.K. about the May 27, 2020 incident. The May 04, 2019 agreement between the parties stating in part:

Both adult tenants have been provided with numerous warnings not to smoke marijuana on the property. Also, the tenant was involved in an incident of leaving a smoking pipe on the property. Any further breaches of such nature will result in the tenant receiving a one month notice to end tenancy immediately and the tenant agrees to sign such document.

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 Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

In relation to the May 27, 2020 incident, the parties disagree about what occurred and whether Tenant M.L. was smoking marijuana on the property. I do not find it necessary to decide whether Tenant M.L. was smoking marijuana on the property. Even assuming Tenant M.L. was, the allegation that Tenant M.L. did so is not sufficient to end the tenancy under section 56 of the *Act*. Section 56 of the *Act* is reserved for serious situations that are urgent. The incident alleged is not serious enough to warrant ending the tenancy early under section 56 of the *Act*. The nature of the incident alleged is such that it should be dealt with through a One Month Notice if the requirements in section 47 of the *Act* are met.

The Agent testified about finding a pipe on the property. I find this occurred prior to May 04, 2019 because it is noted in the agreement between the parties. This is not sufficient to end the tenancy under section 56 of the *Act* as it is neither serious enough in nature or urgent. I note in particular that it occurred a year ago.

The Agent testified about how Tenant M.L. reacts when confronted about the smoking issue. The Agent did not provide details about these reactions such that I can find they meet the two-part test set out in section 56 of the *Act*.

The Agent raised an issue about there being no fixed term tenancy in place at this time and submitted that this is somehow relevant to ending the tenancy under section 56 of the *Act* because insurance companies look for a fixed term tenancy. The Tenants were not required to sign a new fixed term tenancy agreement. The tenancy has become a month-to-month tenancy. The Tenants have done nothing wrong in this regard. This is not grounds to end a tenancy.

The Agent raised an issue about a broken lock in the rental unit. The Agent submitted no documentary evidence about this. In the absence of further evidence, I am not satisfied this amounts to putting the Landlord's property at significant risk or causing extraordinary damage. Nor am I satisfied this amounts to an urgent situation.

The Agent raised an issue in relation to the Tenants getting into a fight and one of the Tenants threatening to call the police. Again, the Agent gave minimal details about this incident. I am not satisfied it meets either of the aspects of the two-part test set out in section 56 of the *Act*.

In summary, the Agent raised issues that are not sufficiently serious or urgent to warrant ending the tenancy under section 56 of the *Act*. All of the issues raised are the type of issues that should be dealt with through a One Month Notice if the Landlord feels they

meet the requirements of section 47 of the *Act*. Further, the Agent provided few details and minimal evidence about a number of the issues raised. In the circumstances, the Landlord has failed to prove the incidents alleged meet the two-part test set out in section 56 of the *Act*. I decline to issue the Landlord an Order of Possession pursuant to section 56 of the *Act*. The tenancy will continue until ended in accordance with the *Act*.

Given the Landlord was not successful, I decline to award the Landlord reimbursement for the filing fee.

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: July 07, 2020

Residential Tenancy Branch