



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On June 13, 2020, the Landlords made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Landlords S.T. and B.W. attended the hearing, with A.M. attending as a witness later in the hearing. The Tenant attended the hearing as well, with J.V. All parties provided a solemn affirmation.

B.W. advised that the Tenant was served the Notice of Hearing and evidence package by posting it to the Tenant’s door on June 16, 2020. A signed proof of service form was submitted to corroborate service. The Tenant confirmed that she received this package; however, she stated that she received it on June 21, 2020 and that the dial in codes were not included in that package. She stated that she has been involved in “many” previous Dispute Resolution proceedings in the past, but she only found out about this hearing date and how to call in when she contacted the Residential Tenancy Branch a few days ago.

I find it important to note that she acknowledged receiving this package on June 21, 2020. If this is the date that she received this package, it is not clear to me why she waited until a few days ago to inquire about the hearing, as she alleges. Furthermore, as she stated that she has participated in other Dispute Resolution proceedings prior to this one, I find it reasonable to conclude that she would have been aware of the specific documents that would be included in the Notice of Hearing package. Therefore, had she not received the required information in this package, it is not clear to me why she waited until just days before the hearing to get that pertinent information.

When reviewing the Tenant's testimony, I do not find that her testimony is consistent, nor does it make sense. During the hearing, I did not get the sense that the Tenant was being truthful, and these submissions cause me to question the reliability of her testimony on the whole. Regardless, as she acknowledged that she received the Notice of Hearing and evidence package on June 21, 2020 and as she attended the hearing, I am satisfied that the Tenant was served the Notice of Hearing and evidence package.

B.W. advised that he submitted late, video evidence to the Residential Tenancy Branch; however, he did not serve this evidence to the Tenant. As such, I have excluded this evidence and will not consider it when rendering this Decision. The Landlords were still permitted to provide testimony with respect to the contents of these videos.

The Tenant advised that she submitted evidence to the Residential Tenancy Branch "a couple of days ago" when she contacted the branch about the details of the hearing. Again, as she advised earlier that she had attended many hearings in the past, I can reasonably infer that she would be aware that any evidence she wanted to rely on must be submitted well in advance of the hearing. As well, as she received this package on June 21, 2020, it is not clear to me why she waited until a few days before the hearing to act.

She advised that she served this evidence to the Landlords by email a few days before the hearing, but the Landlords advised that they never received any evidence from the Tenant. When reviewing the records on the file, I find it important to note that the Tenant only contacted the Residential Tenancy Branch on July 6, 2020 to find out about the hearing date, which is contrary to her testimony that she did this a few days ago. Furthermore, there is no record of any evidence that was submitted by the Tenant "a couple of days ago" as she alleged. Moreover, even if evidence was submitted by the Tenant "a couple of days ago", it would not have complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure.

Based on the doubts I have with the truthfulness of the Tenant's testimony, I am skeptical that she submitted evidence for this file as she purports. As a result, I am satisfied that no evidence was submitted by the Tenant for consideration on this file. Moreover, I find that I am increasingly doubtful of the credibility and reliability of the Tenant's submissions.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an early end to this tenancy and an Order of Possession?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2020, that rent was currently established at \$1,420.00 per month, and that it was due on the first day of each month. A security deposit of \$675.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

B.W. advised that the Tenant moved her husband and a pet into the rental unit after the tenancy commenced, and this was contrary to the tenancy agreement. He stated that their actions and behaviours at night, such as loud music and chopping wood, disturb other tenants on the property. Most of the other tenants on the property are seniors and they are constantly woken up at night. He stated that the Landlords warned the Tenant, but she will not stop. He submitted that one tenant has been affected so much by these behaviours, that her health is compromised, and she can no longer go to work. He stated that the Tenant's children will antagonize other tenants' dogs, and he does not know if those animals might eventually attack the children.

He stated that the Tenant shows other tenants the middle finger, that she threatens them, and that she threatened the Landlords as well by warning them that her dog will bite them. He submitted text messages as documentary evidence to corroborate this testimony. He also stated that the Tenant threatened them over text by stating "You watch what will happen to your property", but he did not submit this as evidence. He stated that the tenants on the property are scared for their safety. With respect to the videos, he advised that one video depicts the Tenant playing loud music late at night and the other video demonstrates that the Tenant is attempting to silence another tenant's dog with some sort of electronic device.

Finally, he advised that the Tenant had damaged four appliances. He stated that when he was advised that the washing machine was not functioning, he investigated the issue and discovered a screwdriver in it because the Tenant had attempted to fix it. He stated that there was an issue with the stove not working and he provided the Tenant with a replacement stove, but he did not realize there was a rat's nest in it. He apologized and later cleaned this out. The Tenant told him this second stove was not working and when he investigated, he witnessed the Tenant punching it. He also stated that he was told by the Tenant that the fridge was not working. He submitted pictures as documentary evidence to support his position regarding the appliances.

The Tenant advised that when she moved in, the appliances were not working. She stated that an old man was the previous tenant and he never brought up any appliance issue with the Landlords. She submitted that the washing machine stopped working shortly after she moved in, but the Landlord replaced this. As well, she stated that the oven was not plugged in. However, she plugged it in and left the house, but when she returned, the stove was on, which was unsafe. She stated that the Landlord brought her a replacement stove, but it was only discovered that there was a rat's nest in it after it was turned on. She advised that the fridge was old and it simply stopped working. She refutes that she did any damage to any of the appliances and they reason they stopped working was because they were old. She also refutes that she has made any excessive noise or has threatened any of the other tenants on the property.

Witness A.M. attended the hearing and advised that the Tenant does not have any respect for anyone's property. She stated that the Tenant stole her lawnmower and other property from other tenants, and she has witnessed the Tenant doing so. However, she stated that she never reported these thefts to the police, and while she took pictures of this happening, none of this evidence was submitted for consideration. She stated that the Tenant uses abusive language, that the Tenant has threatened her to fight, and that the Tenant has teased her dog by using some sort of electronic device to stop it from barking. She advised that she looked up the Tenant's name in the court registry and has discovered that the Tenant has a lengthy criminal history for issues related to violence and fraud. She is stressed and she is afraid to leave the rental unit as it is her belief that her safety is at risk. Her health has deteriorated to the point that she is unable to work, and she has a doctor's note to corroborate this; however, this was not submitted as documentary evidence. Furthermore, she also filed a restraining order against the Tenant but there has been no evidence submitted to support this either.

The Tenant advised that she did not steal the lawnmower, but she simply asked to use it. She also submitted that she never stole one of the other tenant's food. She stated that this other tenant babysat her child and her child ate some food out of this person's fridge. She denied taking any property from any of the other tenants and reiterated that everything around the property is under surveillance, either by her security cameras or by other tenants' cameras.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlords to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

When reviewing the totality of the evidence before me, I understand the concerns of the Landlords; however, when two parties to a dispute provide equally plausible accounts of

events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to B.W.'s submissions regarding what he considered to be threatening behaviour, while what he and A.M. have testified to appear to be inappropriate, I do not find that he has provided sufficient evidence to support that the alleged behaviour used was in any way a threat, nor do I find that he submitted sufficient evidence to establish how displaying the middle finger would support the high threshold for justifying an early end of tenancy. Furthermore, if the Landlords or the tenants of the property believed that the Tenant had threatened them, there is no evidence that the police were contacted about these allegations. In my view, if they were concerned for their safety or well-being due to threatening behaviour, it would seem logical that the police would be involved.

Moreover, while B.W. and M.A. submitted that her health was in jeopardy, there has been insufficient evidence submitted to support the claim that the Tenant's actions are directly affecting anyone's health. As well, I find it important to note that any doctor was not likely present to observe firsthand any of the interactions to confirm any of the incidents of alleged harassment or abuse. As such, even if there were doctor's notes available, apart from being advised by the affected tenant that this was the source of their declining health, I find that I can give little weight to any doctor's diagnosis to support that the Tenant's behaviour and actions were specifically the cause of the M.A.'s health issues.

Regarding the allegations of stolen property, other than the testimony of M.A., I do not find that the Landlords have provided sufficient evidence to support this allegation that any property was stolen. I also find it important to note that the police were never called about these incidents as well. If there were multiple thefts in and around the property, it is not clear to me why no one reported this to the police.

Finally, with respect to B.W.'s claims that the Tenant has damaged appliances, again, there is insufficient evidence submitted to support that the Tenant has caused extraordinary damage to the rental unit, which would be a requirement for this type of Application. Rather, it appears as if the Landlords have provided the Tenant with appliances that were, more likely than not, used and past their useful life. I find this conclusion is supported by the fact that the Landlords provided the Tenant with a replacement stove that had a rat's nest in it. When reviewing the evidence on this issue, I do not find that the Landlords have provided persuasive evidence to support that the Tenant has intentionally damaged these appliances.

Based on the totality of the evidence before me, it is clear to me that the tenants of the property are dissatisfied with each other, and it is not beyond the realm of possibilities that they have all engaged in heated, unpleasant interactions that have escalated tensions between them. While I do not find that the Landlords have submitted compelling evidence that the Tenant's actions or behaviours constitute a threat that satisfies the elevated threshold of an early end of tenancy Application, I find her credibility to be lacking and I am doubtful of the legitimacy of her submissions.

I find it more likely than not that the Tenant has been engaging in some actions and behaviours that are aggravating factors which contribute to the dysfunctional relationships between all the parties. As a result, I am satisfied that some of the Tenant's actions and behaviours may support the formation of the basis to attempt to end the tenancy using a One Month Notice to End Tenancy for Cause. I strongly caution the Tenant that she is on formal notice that any continued, escalated behaviours or actions that are unacceptable or inappropriate may jeopardize her tenancy.

As the onus is on the Landlords to prove their claims, under the circumstances described, I find that they have provided insufficient evidence to warrant ending this tenancy early based on this type of Application. Consequently, I find that the Landlords are not entitled to an Order of Possession and I dismiss this Application in its entirety.

As the Landlords were not successful in this claim, I find that they are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Landlords' Application without leave to reapply.

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: July 7, 2020

Residential Tenancy Branch