



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On June 26, 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*.

Both Landlords attended the hearing, with H.C. attending as counsel for the Landlords. Neither Tenant attended the 64-minute hearing. The Landlords provided a solemn affirmation.

The Landlords advised that each Tenant was served a Notice of Hearing and evidence package by posting it to the Tenants’ door on June 27, 2020. Signed proof of service forms were submitted to corroborate service. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing and evidence packages.

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.

The Landlords advised that the tenancy started on April 1, 2020, that rent was currently established at \$1,400.00 per month, and that it was due on the first day of each month. A security deposit of \$700.00 was also paid. A partial copy of the signed tenancy agreement was submitted as documentary evidence.

H.C. advised that the Landlords were relying on Sections 32(2), 47.1(d), and 47.1(h) as the bases for the Landlords wanting to end the tenancy. He submitted that, despite there being a no smoking clause in the tenancy agreement, the Tenants smoked in the rental unit from the start of the tenancy. He advised that this clause in the tenancy agreement is particularly important because Landlord A.H. is currently undergoing treatment for cancer and the presence of smoke will undermine her health. He stated that neighbours have witnessed the Tenants smoking around the rental unit, and the Landlords can not only smell smoke emanating from the rental unit, but they have personally witnessed the Tenants smoking in the rental unit. He advised that the Landlords texted the Tenants, asking them to refrain from smoking; however, the Tenants denied smoking, and they became defensive, dismissive, and combative, and they used inappropriate language. He submitted that due to A.H.'s medical history and respiratory issues, and due to M.D. being pregnant, the Landlords are in a vulnerable and dangerous environment created by the Tenants' daily smoking. Therefore, this justifies the early end of tenancy request.

A.H. advised that she is still undergoing treatment for cancer, that she has developed a lung infection, that she can smell the smoke, and that this smoke even caused her to vomit on one occasion.

Landlord M.D. reiterated that the Tenants have been observed smoking in the rental unit. She stated that the Tenants were texted on June 15, 2020 to stop smoking because it was affecting their health; however, the Tenants denied that it was them and they blamed the neighbours.

H.C. advised that there was an incident that occurred on May 22, 2020 where one of the Tenants was banging on the door that joins the rental unit to the Landlords' unit. He

stated that this Tenant was swearing, shouting obscenities, and he yelled about “dead bodies” and “guns”. He submitted that this made the Landlords “feel threatened”. When he was questioned if there were any direct threats made by the Tenant, he submitted that by banging on the door, this was an “implied threat”. As well, he submitted that the Tenants also banged on the walls and that this would constitute a threat; however, he was mistaken as the Tenants never banged on the walls.

M.D. advised that she arrived home and the Tenant was banging on this door. When she opened it, she stated that the Tenant shouted several profanities, and that he rambled nonsensically on many different topics ranging from religion to politics. She stated that he mentioned “guns”, “dead bodies”, and “Louis Riel”, but because she was so startled and panicked by this behaviour, she did not recall the specific context of his ramblings. She advised that she called the police, that they attended the scene, and that they questioned the Tenant. However, she has no other information of what happened. No arrest was made at this time. She could not specifically state if she was personally threatened by the Tenant during this incident. She speculated that his behaviour was “not normal”, that it was indicative of “mental health issues”, and that he “could do anything”.

H.C. submitted that the Tenant mentioning “Louis Riel” would be indicative of a mental health issue. As M.D.’s mother lived with the Landlords, above the Tenants, the incidents of swearing and aggressive threats support the request for an early end to the tenancy.

He advised that there was a subsequent incident where the police attended the rental unit and one of the Tenants was arrested, but he does not know why.

M.D. advised that she is not sure when this Tenant was arrested but she suggested that it was in early June 2020. She stated that seven police cars attended and one of the Tenants was arrested, but she does not know why. This Tenant returned to the rental unit three weeks later.

H.C. advised that there was an incident where one of the Tenants was swearing at a 10-year old boy. M.D. confirmed that the neighbours witnessed this interaction that occurred on another property. She did not know the specific details of what happened, but she confirmed that this Tenant swore at a child.

H.C. advised that there have been multiple incidents of the Tenants yelling loudly and aggressively, as well as making racist remarks. He referenced an unsigned letter by a

neighbour that was submitted as documentary evidence, and this letter supports the Landlords' position regarding the Tenants' behaviour. He read from another witness letter that was not submitted as documentary evidence, and he stated that this neighbour wrote that they listened to the Landlords complain about the Tenants' behaviours and repeated threats, that the Tenants' shouting can be heard, that M.D.'s mother can go to their house to seek refuge if necessary, and that the Landlords live in fear. Finally, H.C. advised that the Tenants' made racist remarks to the Landlords by saying "You people" and "Go back to India".

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 Tenants have 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, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to H.C.'s submissions regarding the Sections of the *Act* that he believed to be applicable to this Application, as he advised during the hearing that Section 32(2) pertains to the responsibility for the Tenants to maintain the rental unit in a reasonable health, cleanliness and sanitary standard, this is not generally relevant to an Application for an early end of tenancy. Furthermore, he did not make any submissions with respect to the Tenants' behaviours or actions pertinent to this Section of the *Act* that he was attempting to rely on, nor how those would have related to an Application for an early end of tenancy.

With respect to his submissions regarding Sections 47(d) and (h) of the *Act* that he believed to be applicable to this Application, as he was advised during the hearing, these sections are relevant to ending a tenancy due to a One Month Notice to End Tenancy for Cause that is issued by a Landlord. While there are some considerations under this Section that are similar and carried over to an Application for an early end of tenancy, as a notice to end tenancy was never issued, I will consider the submissions made by the Landlords and their counsel under Section 56 of the *Act*, which is the appropriate Section of the *Act* that must be considered based on the Landlords' Application.

Regarding the incident of the Tenant banging on the door and H.C.'s suggestion that this would constitute threatening behaviour, I find it important to note that the Landlords could not specifically recall what words the Tenant used when he was shouting incoherently, nor could they definitively state that the Tenant directly threatened them. While mentioning the words "guns" and "dead bodies" is certainly disturbing, there is insufficient evidence that the Landlords were ever threatened. Furthermore, had there been an active, direct threat at the Landlords, I note that there is no evidence that the police took any action to address this. The consistent evidence is that they attended and then left with no further action taken. I appreciate H.C.'s attempt to suggest that the Tenant banging on the door, in conjunction with his erratic behaviour, was a direct threat to the Landlords, even though it was "implied"; however, I find this to be a weak argument. I have no doubts that the Landlords felt threatened by this unusual and unacceptable behaviour, but I do not find that there is any compelling or persuasive evidence before me to support the position that the Landlords were directly threatened.

With respect to the other submissions regarding the Tenants' questionable behaviours, I acknowledge that the Tenants' frequent yelling, screaming, use of profanity and racist language, is inappropriate. However, I do not find that sufficient evidence has been submitted to establish how the use of these words would support the high threshold for justifying an early end of tenancy. Moreover, while one of the Tenants was arrested at one point, there is no indication that this was in any way related to the tenancy.

Furthermore, while the Landlords and H.C. speculate that one of the Tenants may suffer from a mental health issue, even though his behaviour might be unsettling, I do not give any weight to H.C.'s suggestion that the Tenant's mention of Louis Riel would indicate that he suffers from a mental health issue. Moreover, I find that they have submitted no evidence to substantiate that there has been a diagnosis of a mental health disorder, nor has there been any evidence submitted that even if the Tenant did suffer from a disorder, how this would constitute a ground to end the tenancy under this type of Application.

Finally, with respect to the Tenants smoking in the rental unit contrary to the no smoking clause in the tenancy agreement, I accept from the undisputed testimony of the Landlords that the Tenants have been smoking in the rental unit, contrary to this clause. I also acknowledge their testimony with respect to their health issues and the significant impact that the smoking would have on their health and recovery. However, I find it important to note that the Landlords advised that the Tenants started smoking at the start of the tenancy. Given the significance of their health issues, it is not clear to me why they did not take action to have the Tenants refrain from smoking once this behaviour began.

As the onus is on the Landlords to prove their claims, even though I acknowledge that they are uncomfortable and disturbed by the Tenants' behaviours and actions to date, 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.

Based on the totality of the evidence before me, it is clear to me that the Tenants have been engaging in actions and behaviours that are aggravating factors that 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 Tenants that the undisputed, documented evidence of their actions and behaviours have likely jeopardized their tenancy. They are on formal notice that any continued, escalated behaviours or actions that are

unacceptable and inappropriate will likely further support reasons for ending the tenancy on a One Month Notice to End Tenancy for Cause.

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 11, 2020

Residential Tenancy Branch