



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

In this dispute, the landlords seek an order to end a tenancy pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the filing fee.

The landlords applied for dispute resolution on June 23, 2020 and a dispute resolution hearing was held on July 20, 2020. Two of the three landlords and both tenants attended the hearing, and they were given a full opportunity to be heard, to present testimony, make submissions, and to call witnesses. There were some issues with evidence, which I shall address below.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Preliminary Issue: Evidence

In reviewing the file at the start of the hearing, I noted that the only documentary evidence submitted by the landlords were a copy of the written tenancy agreement, a copy of a late payment transaction (bank transaction, it would appear), and a photograph of a police officer’s business card.

The female landlord testified that she had uploaded a significant amount of evidence right after she made her application. However, as I noted to her during the hearing, she appears to have removed all the evidence on June 27, 2020. She seemed perplexed that this had happened, but the file reflects that no evidence – except for the above-noted documents – was submitted. It is the responsibility of an applicant to ensure that all of their evidence is submitted in advance of any hearing. Finally, the tenants testified that, other than the three-page Notice of Dispute Resolution Proceeding document, they have received no evidence from the landlords.

I explained to the landlords that they could either (A) proceed with the hearing today, and that I would only consider their testimony and the documentary evidence that had been submitted (the tenancy agreement), or (B) have me dismiss their application to allow them to reapply. The female landlord advised that she wished to proceed today.

Issues

1. Is the landlord entitled to an order under section 56 of the Act?
2. Is the landlord entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

The landlords testified that the tenants have been smoking around the property and inside the rental unit. The tenants' smoking has been a problem "right from the get-go," and that they smoke in the rental unit daily. The tenancy started on November 8, 2019, and the rental unit is a basement suite in a house.

According to the landlords, the tenants' smoking is causing health issues with the landlords' children, who have asthma. The landlords testified that they have communicated with the tenants since February or March 2020 about the smoking, to no avail.

The tenants testified that while it is a non-smoking property, "we don't smoke on the property," but instead they smoke in their vehicles.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 56 (1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied that

- (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.

In this case, the landlords claim that the tenants' smoking has put, and puts, their children's health at risk. They claim that the tenants smoke on the property and in the rental unit. The tenants dispute this claim and said that they do not smoke on the property; they only smoke in their car.

When two parties to a dispute provide equally reasonable 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. In this case, I find that the landlords have failed to provide any evidence that the tenants smoke on or in the property, thereby resulting in any deleterious health effect on any person within that property.

The landlords bear the burden of proof in such applications, and in the absence of any documentary evidence to tip the scales of proof in their favour, they have not proven their case.

Taking into consideration all the disputed oral testimony before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving their application for an order under section 56 of the Act.

Conclusion

I dismiss the landlords' application, without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 20, 2020

Residential Tenancy Branch