



Dispute Resolution Services

Page: 1

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 and an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). In addition, they seek recovery of the filing fee under section 72 of the Act. The landlords applied for dispute resolution on July 13, 2020 and a dispute resolution hearing was held, by way of teleconference, on July 28, 2020. The landlords, two tenants, and a representative for the third tenant, attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

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: Service of Notice of Dispute Resolution Proceeding and Evidence

The landlords testified that they served the Notice of Expedited Hearing, along with their documentary evidence, to the tenants; they did not say how it was served. One of the tenants said that they found the material in their BBQ. The tenants that were at the hearing said that they had reviewed the material in advance of the hearing. Based on this evidence, while it is unclear how and when the evidence was served on the tenants, I am prepared to find that they were served sufficiently for the purposes of the Act.

Preliminary Issue: The Third Tenant

Three tenants were named on the landlords’ application. The representative for the third tenant, E.W., said that he is not a tenant and is not living on the property. The landlords said that he is a tenant, despite E.W. not being named in any written tenancy agreement that was submitted into evidence. It is unclear how E.W. came to be added to the application but given the outcome of this dispute the matter is moot.

Issues

1. Are the landlords entitled to orders under section 56 of the Act?
2. Are the landlords entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

The tenancy started on March 7, 2020 and it was to be a short-term tenancy ending June 1, 2020, and monthly rent is \$650.00. The tenants (at least, tenants E.G. and C.O.) currently reside in the property.

The landlords gave evidence that the reason they want to end the tenancy is that there have been incidents involving firearms and threats of violence, and that they “don’t feel safe in [our] house.” The landlords’ house is next door to the rental unit where the tenants reside. The primary source of the violence and firearms is, and was, caused by two third parties. One of these third parties is identified as D.J., while the other is M.

The tenants had, at some earlier point, much earlier than the main incident of May 4, 2020, permitted D.J. access to the property for various reasons. However, the relationship between D.J. and E.G. deteriorated. D.J. did not stay away as asked by the tenants, and he ended up stealing personal property of the tenants. The relationship deteriorated so badly that on May 4, 2020, D.J., along with some friends, came onto the rental unit property while the tenant E.G. was having a bonfire. The tenant told D.J., “time to leave,” which he did not. Then more of D.J.’s friends showed up.

What happened next can only be described as one of the worst physical assaults possible. D.J., along with his associated M., proceeded to assault the tenant for over an hour, including hitting the tenant with an empty bottle, kicking him in the head with their steel toe boots, pouring gasoline on the tenant accompanied by threats to light him on fire, forcing the tenant to hand over his firearm whilst a knife was held at his back, and so on. The tenant suffered severe concussions, two fractured ribs, a fractured forearm, and has difficulty growing hair due to his scalp being separated from the skull during the assault. D.J. purportedly threatened to “cut everybody’s throat.” He also damaged the landlords’ property. On May 5, M. returned to the property with a knife, and further threatened the tenants.

The landlords reiterated that because the tenants had let D.J. onto the property to begin with, that “he’s their problem,” and that the events that followed are their responsibility.

Submitted into evidence is a copy of an Undertaking for D.J., who has a court appearance on September 1, 2020. I note that he is charged with assault cause bodily harm, uttering threats, and break and enter home invasions, under the *Criminal Code*.

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. In this dispute, the landlords seek orders under section 56(1) of the Act.

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.

Here, while the tenants previously permitted the individual by the name of D.J. onto the property (apparently to let him live there temporarily and store some of his belongings), it is clear from the evidence that they did *not* give him permission to enter the property on May 4, and anytime thereafter, during which time D.J. and M. committed various criminal acts. The tenants testified that E.G. told D.J. and his gang that it was “time to leave.” Despite the tenant asking these two individuals to leave, they ignored him, and proceeded to assault him, among other illegal activities. Thus, I cannot find that any of the three tenants permitted a person (that is, D.J. or M.) on the residential property. Further, I note that the landlords did not dispute the tenant’s version of how the assault took place, or the tenant’s testimony regarding his asking the two men leave.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the elements of section 56 of the Act that would give me reason to end the tenancy. For this reason, I dismiss the landlords’ application.

Regarding the filing fee, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to to another party. A successful party is generally entitled to recovery of the filing fee. As the landlords were unsuccessful in their application, I dismiss their claim for the filing fee.

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 28, 2020