



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- An early end to the tenancy pursuant to section 56 of the *Act*; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Although the Tenant acknowledged receipt of some of the Landlord’s documentary evidence at the time the Notice of Dispute Resolution Proceeding Package was personally served on them, they denied receiving the majority of the photographs, and several warning letters.

The Landlord stated that all of the documentary evidence before me was served on the Tenant at the time the Notice of Dispute Resolution Proceeding Package was served, and that in any event, the Tenant had previously received all of the warning letters.

Based on the testimony of the Landlord, which I find to be reasonable and compelling, as well as common sense, I find it more likely than not that the Tenant received the warning letters in the documentary evidence before me at the time the Notice of Dispute Resolution Proceeding Package was served, prior to it, or both. As a result, I am satisfied that the Tenant is aware of their contents and I have accepted them for consideration. Although the Tenant denied receipt of numerous photographs submitted by the Landlord for my review, based on the testimony of the Landlord, which I find to be reasonable and compelling, as well as common sense, I find it more likely than not that the Tenant received these photographs at the time the Notice of Dispute Resolution Proceeding Package was served. Further to this, these photographs align with facts agreed upon by the parties in the hearing, such as the presence and location of a make-shift shed, the use of electrical cords on the property, and the state of the deck. As a result, I find that they are reliable and that there is no prejudice to the Tenant in accepting them for consideration. I therefore accepted and considered all of the Landlord's documentary evidence in rendering this decision.

Issue(s) to be Decided

Is the Landlord entitled to end the tenancy early pursuant to section 56 of the *Act*?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord stated that the Tenant has overloaded the deck and blocked both external staircases, which poses a risk to the Landlord's property and the other occupants of the premises, as the deck is above the shared laundry room and entry doors to other units and cannot support the weight load of the Tenant's possessions. The Landlord stated that the Tenant is a hoarder and that they have been working with the Tenant regarding this, and other issues, for almost a year without success. The Landlord stated that they hired a contractor in April of 2020, to assess the stability of the deck and any safety issues, and that the contractor confirmed that the deck is overloaded and presents a significant risk to the property and a significant safety risk to all occupants of the premises. The Landlord stated that the Tenant has therefore seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant and

sought to end the tenancy as a result, pursuant to section 56 of the *Act*. In support of their testimony the Landlord provided numerous photographs, several warning letters to the Tenant, and a copy of a report from the contractor who inspected the property in April 2020.

The Tenant denied that the deck is overloaded, stating that although it is crowded, most of the items are lightweight and most of the boxes and bins are either empty or only partially full. The Tenant also stated that the stairs have been blocked to prevent another occupants pet from entering the deck rented to them under the tenancy agreement and defecating on it.

The Landlord stated that the Tenant engaged in illegal activity that has caused damage to their property and 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, by knowingly using a fire pit contrary to their instructions and city bylaws. The Landlord stated that the firepit damaged the lawn, that they could face fines from the city for its use, and that the fire department could be called resulting in a disturbance to other occupants of the property and their neighbours. In support of this testimony the Landlord provided several photographs, a letter to the Tenant dated June 23, 2020, and a copy of the city bylaws. The Landlord therefore sought to end the tenancy pursuant to section 56 of the *Act*.

The Tenant acknowledged that their daughter used the firepit while they were not home but stated that they immediately put out the fire upon their return and advised their daughter not to use it again. The Tenant stated that it was only ever used once and denied that the damage to the lawn shown in the Landlord's photograph is from their actions or the firepit.

The Landlord stated that the Tenant is impacting the other occupants use of the property by taking up too much of the front, side and back yard, with things such as a trailer, a chicken coop, building materials, and an improvised work shed. The Landlord therefore sought to end the tenancy pursuant to section 56 of the *Act* for significant interference with other occupants of the premises. In support of this testimony the Landlord submitted photographs and a letter to the Tenant dated January 21, 2020.

The Tenant denied that their use of the property is significantly impacting other occupants, stating that the trailer is parked in the driveway rented to them as part of their tenancy agreement, and that it is their understanding that the main portions of the yard are for their own use under the tenancy agreement.

The Landlord also sought to end the tenancy under section 56 of the *Act* as they believe that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant of the property and put the Landlord's property at significant risk by running electrical cords from the house to the deck and the improvised shed on the property. The Landlord stated that this could overload the older electrical panel, presenting a serious fire-safety risk to the property and its occupants and argued that the Tenants use of the property for a workshop is illegal. In support of this testimony, the Landlord submitted several photographs and a letter dated June 23, 2020.

The Tenant stated that as there are no exterior outlets, they have no choice but to run extensions cords from inside the home but stated that there is no fire risk as these are high-quality exterior extensions cords in good condition. The Tenant stated that these extension cords are not in constant use and that the one to the deck only powers a low-wattage light. The Tenant stated that the extension cord running to the improvised shed is only used to run small power tools that draw less than 15 amps, and that they only use one power tool at a time on the extension cord. Further to this, the Tenant stated that they have never set off the breaker and don't believe this presents any fire risk, as they are using extension cords as one would typically expect them to be used.

When asked, the Landlord could not confirm for me whether or not the electrical panel can withstand the electrical load currently being used but stated that they are a professional engineer and are speaking from experience.

The Landlord also sought recovery of the \$100.00 filing fee.

Analysis

Although the Landlord argued that it would be unreasonable, or unfair to the them 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, I disagree. Based on the Landlord's testimony in the hearing and their own documentary evidence, they have been aware of how the Tenant uses and keeps the deck and concerned about the possible risk to the property and occupants caused by overloading the deck, since at least July 19, 2019, almost one year prior to the date of the Application. The Letters in the documentary evidence before me dated July 19, 2019, October 16, 2019, and January 21, 2020, all mention the state of the deck, the need for the Tenant to immediately reduce the deck

load, and the possible danger failing to immediately clean the deck and remove possessions may pose to the property and other occupants.

Although the Landlord also submitted an inspection letter from a contractor dated April 3, 2020, wherein the contractor stated that the deck is overloaded and poses a significant safety risk, I note that the Landlord did not file the Application seeking to end the tenancy as a result of this alleged risk, until July 17, 2020, over three months later. Further to this, although the Tenant acknowledged that there are a significant number of possessions on the deck, they argued in the hearing that the deck is not in fact overloaded as many of the items on the deck are not heavy and most of the boxes and bins are either empty or only half-full. As a result of the Tenant's testimony, and as there is no evidence before me that the contractor actually entered the deck or inspected the contents of any of the boxes/bins, paint cans etc. stored there, I am not satisfied that the contractor who authored the report dated April 3, 2020, could reasonably have known whether the possessions on the deck constitute an unreasonable load. Further to this, while I acknowledge that the Tenant's use of the deck may constitute grounds to end the tenancy under section 47 of the *Act*, I am not satisfied that any risk posed to the property or other occupants by the Tenant's use of the deck, should it exist, is such that it would be unreasonable for the Landlord to wait for a notice to end the tenancy under section 47 to take effect, as the Landlord has taken no significant action in relation to ending this tenancy with regards to this issue for almost a year and waited more than three months after receiving the contractors report to file this Application.

In rendering the above decision I find it important to note that the temporary moratorium on the issuance of all Notices to End Tenancy was lifted on June 24, 2020, almost one month prior to the date of this Application, and that the Landlord could have served a One Month Notice for this issue prior to the state of the emergency, had they wished to do so.

Although the Landlord argued that the Tenant engaged in illegal activity that caused or is likely to cause damage to the Landlord's property or adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property by using a fire pit on the property contrary to their instructions and city bylaws, there is no evidence that this occurred more than once or that the firepit is still in use. The Landlord also argued that the Tenant is impacting the other occupants use of the property by taking up too much of the front, side and back yard. While I acknowledge that these issues may constitute grounds to end the tenancy under section 47 of the *Act*, again I am not satisfied that it would be unreasonable or

unfair to the Landlord or other occupants of the property, for the Landlord to have to wait to serve and enforce a One Month Notice in relation to these issues.

Finally, although the Landlord argued that the Tenant's use of electrical cords to run equipment both on the deck and in an improvised shed on the property, presents a significant fire safety risk, they did not submit any documentary evidence for my consideration in support of this testimony, other than several photographs of the extension cords on the property and acknowledged in the hearing that they do not know whether or not the breaker for the home can withstand the Tenants use of these electrical cords. Further to this, the Tenant stated that they have never tripped the breaker, that they always ensure that they are using only one tool at a time with the extension cord, that all tools draw 15 amps or less, and that these extension cords are not in constant use. As a result of the above, I am not satisfied that the Tenant's use of electrical cords demonstrates a risk to the property or it's occupants.

Based on the above, I therefore dismiss the Landlord's Application seeking to end the tenancy early pursuant to section 56 of the *Act*, without leave to reapply. The Landlord remains at liberty to serve a One Month Notice in relation to the above noted issues, should they believe that they have cause to do so under section 47 of the *Act*.

As the Landlord's Application was dismissed, I decline to grant recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed in its entirety 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: August 7, 2020

Residential Tenancy Branch