



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 the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to this tenancy and an Order of Possession, pursuant to section 56;
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 19 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 15, 2020. Monthly rent in the amount of \$2,500.00 is payable on the first day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord testified regarding the following facts. The tenant is a threat to the landlord's falcons, work and livelihood. The landlord spent four to five months to look for the right tenant. The landlord told the tenant at the beginning of this tenancy that she is to stay away from the landlord's work area, where she raises and sells falcons, which the tenant initially agreed to do. She told the tenant that her birds are extremely sensitive and not to park or walk her dog near there. The tenant walks her dog near the falcon pens, and it stresses them out, such that they cannot stay on top of their eggs for long enough. The landlord has received complaints from her buyers that the bird eggs were late. The tenant can walk her dog in the back area away from the landlord's work area but chooses to go near the falcons. The landlord moved the baby birds up and away from the tenant, but one baby falcon just died because she could not move it since it was feeding with its mother. The landlord was unable to see what the tenant was doing before because she was previously living in an RV but now, she moved into the main house and she can see the work area where the falcons are living.

The tenant stated the following facts. She has not done anything different from the start of her tenancy. She has been walking her dog around the perimeter of the yard and acreage, not just by the landlord's falcons, since she moved in the rental unit in February. The landlord's first complaint to the tenant was on June 10, 2020, despite the landlord moving into the main house on April 1, 2020. After the landlord's first complaint, there was a litany of complaints, rules and restrictions from the landlord, which are not in the tenancy agreement. The landlord has wanted the tenant to move out since the beginning of her tenancy, even though the tenant has tried to get along with the landlord. The tenant is not sure what is posing such a threat. She thinks the hot 35-degree Celsius weather killed the landlord's baby falcon.

Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, 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;*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord did not testify about which one of the above parts of section 56 of the *Act*, she was applying under. The landlord did not indicate whether she issued a 1 Month Notice to the tenant. The landlord did not reference or go through any of her evidence during the hearing, despite submitting a lot of photographs, videos, and documents. The landlord is the applicant and must prove her case on a balance of probabilities.

The landlord failed to show the urgency of this situation. She stated that the tenant has been walking her dog by the falcons since the beginning of the tenancy and when she moved into the main house, she could see the area. The tenant maintained that the landlord moved into the main house in April 2020 but did not complain until June 2020. These issues have been ongoing for months. The landlord did not show why it would be unreasonable or unfair for a 1 Month Notice to take effect.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's entire application is dismissed 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 07, 2020

Residential Tenancy Branch