



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

On September 3, 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”).

Landlords L.M. and R.M. attended the hearing, with K.M. attending as an agent for the Landlords. C.H. also attended the hearing as counsel for the Landlords. Neither Tenant attended the 46-minute hearing. All parties in attendance, with the exception of C.H., provided a solemn affirmation.

L.M. advised that the Tenants were each served with a Notice of Hearing and evidence package by posting them to the Tenants’ door on September 10, 2020. A signed proof of service form was submitted to corroborate service. Based on this undisputed testimony, I am satisfied that the Tenants were served the Notice of Hearing and evidence packages. However, she also stated that additional late evidence was submitted on September 28, 2020. As this late evidence was not served in accordance with Rule 3.14 of the Rules of Procedure, I have excluded this evidence. All of the Landlords’ other evidence; however, will be accepted and considered when rendering this Decision.

The Tenants did not submit any evidence for consideration on this file.

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?

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.

L.M. advised that the tenancy started on April 1, 2020, that rent was currently established at \$2,200.00 per month, and that it was due on the first day of each month. A security deposit of \$1,10.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

K.M. advised that on July 16, 2020, she was driving slowly on the driveway when she saw Tenant M.M. in his car. They made eye contact, and then the Tenant suddenly and aggressively drove his car full speed at hers, causing her to back up into a ditch. She did not contact the police about this incident. She stated that he authored an email that referenced this incident; however, this was not submitted as documentary evidence. She testified that the Tenants installed cameras on the property, that they would continuously videotape her children, and that they would threaten her and the Landlords because they “wanted to get back at [them] for something.” She stated that she called the police about the installation of cameras. She feels uncomfortable by the Tenants’ indirect way of harassing them.

L.M. stated that M.M. did not directly address the incident with the vehicles in an email; however, he minimized the significance of this situation. She further submitted that the Tenants made attempts to falsely stage accidents by hiding in the bushes and jumping in front of the Landlords’ cars or their lawnmower. When M.M. jumped in front of R.M. while he was mowing the lawn, the police were called. The police reviewed the video that the Tenants had recorded of the incident and found the Tenants’ account of being almost run over by R.M. to be dubious.

She stated that her neighbour had two different exchanges with the Tenants over disagreements with their dogs. She submitted that M.M. recklessly drove close to her neighbour and dogs, and that the second time this happened, the neighbour contacted the police. However, a police report of this incident was not submitted as evidence. She stated that this neighbour feels threatened and is afraid to walk her dogs.

K.M. advised that there are dusk to dawn lights on the property to protect animals on the property from predators. The Tenants turned these lights off and a bear had attempted to attack the chickens in their coop. The Tenants were warned to turn these lights back on; however, they have refused to do so. She stated that M.M. will walk around the property in an intimidating manner with a stick, and he has advised that he would not look out for people when driving on the property. She submitted that the Tenants would make obscene gestures at the Landlords when they would drive by and call them inappropriate names. She is in fear of allowing her children outside her home.

L.M. testified that she has two special needs ponies, and M.M. would intentionally set off his car alarm as she walked these ponies past, startling them. Furthermore, she stated that R.M. needs a spotter when walking down the driveway in the event that the Tenants may do something, as he has been followed by them before.

R.M. advised that the Tenants are continuously intimidating them and that he is fearful for the safety of his grandchildren and the animals on the property. He submitted that they appear to be attempting to stage accidents in an effort to sue the Landlords. Furthermore, they are antagonizing the Landlords to elicit a reaction or instigate a confrontation. These behaviours are causing the Landlords undue mental stress.

L.M. advised that she required that the police attend when she went to replace a window in the rental unit, and she stated that the police confirmed that M.M. was aggressive. She stated that the neighbour's sister was putting out her garbage when M.M. became aggressive with her as well. However, there was no evidence to support this incident.

C.H. summarized that the Tenants have engaged in ongoing bullying and aggressive behaviours that have caused the Landlords to feel unsafe for their welfare and that of their animals. They fear that this situation may escalate the longer the tenancy continues. She stated that the general threats made, the attempts to stage accidents, and the aggressive driving, amongst the other noted issues, should justify ending the tenancy and that it would be unfair to the Landlords to wait any longer.

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.

Regarding the allegations of M.M. intentionally driving at K.M. or the neighbours, other than the testimony provided, I do not find that the Landlords have provided sufficient evidence to support the allegation that M.M. had driven in this manner. I also find it important to note that the police were never called about the incident involving K.M. on July 16, 2020. Based on the severity of this assertion, it is not clear to me why this event was not reported to the police at the time. Given the limited documentary evidence provided, I do not find that the Landlords have submitted compelling evidence that M.M.'s actions or behaviours constitute a threat that satisfies the elevated threshold of an early end of tenancy Application.

With respect to the Landlords' other submissions regarding what they considered to be unusual, threatening, and aggressive behaviour from the Tenants, while what they have testified to appears to be inappropriate, I do not find that they have provided sufficient evidence to support that the alleged behaviour of the Tenants would satisfy the high threshold for justifying an early end of tenancy. I acknowledge that the police have been requested on occasion; however, given that they have not acted or intervened in any way reinforces, in my view, that there would not be enough proof to support this type of Application.

Based on the totality of the evidence before me, I do not doubt that the Tenants have been engaging in some actions and behaviours that are questionable, unacceptable, inappropriate, and are aggravating factors which contribute to the dysfunctional relationships between all the parties. As the onus is on the Landlords to prove their claims, under the circumstances described, I find that they have provided insufficient evidence to warrant ending this tenancy early based on this type of Application though. Consequently, I find that the Landlords are not entitled to an Order of Possession and I dismiss this Application in its entirety.

However, I am satisfied that the undisputed Tenants' actions, behaviours, and conduct would likely 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 Tenant that they are

on formal notice that their continued, escalated behaviours and/or actions are unacceptable and may have jeopardized their tenancy.

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: September 29, 2020

Residential Tenancy Branch