



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

In this application, the landlords request an order ending the tenancy early and for an order of possession, pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). In addition, they seek recovery of the application filing fee under section 72 of the Act.

The landlords filed their application for dispute resolution on September 28 3, 2020 and a dispute resolution hearing was held on October 20, 2020. The landlords’ agent and the tenant attended the hearing and they were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

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.

Issues

1. Are the landlords entitled to an order 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

By way of background, the tenancy in this dispute started on November 15, 2015. Monthly rent is \$800.00 and the tenant paid a security deposit of \$350.00. A copy of the written tenancy agreement was submitted into evidence.

The landlords’ agent (hereafter the “landlord” for brevity) testified that there was an altercation between the tenant and a former tenant who resided next door to the tenant. This altercation occurred on August 23, 2020. Criminal charges were laid against the tenant and there is an ongoing criminal court matter. According to the landlord, the

upstairs tenants (who appear to be the landlords) witnessed the altercation and have been called as witnesses in a potential upcoming criminal court trial or appearance. There was a release order issued by the Provincial Court, which restricted the tenant's visitation to her rental unit until after September 4, 2020. A copy of the release order, and a revised release order, were submitted into evidence.

According to the landlord, the children residing upstairs are "scared with everything" and the upstairs tenants feel "intimidated and threatened" because they are witnesses to the altercation. The landlord commented that it is difficult to continue a tenancy when this situation is in place.

In her testimony, the tenant did not dispute that there was an altercation with the next door now-former tenant. However, this altercation was the result of the next-door tenant deliberately harassing the tenant, calling her on a few occasions a "70-year-old stinking welfare drug-smoking loser." (The tenant is 54 years old.) In addition, the next-door tenant clipped off many of the tenant's flowers in what the tenant described as "my beautiful garden." They also threw rusty nails into the garden bed, which can kill flowers and plants. The tenant explained that in the five years she has resided in the rental unit she has not had any problems with either the landlords or any of the other tenants.

The tenant and the next-door tenant got into a pushing and shoving match, and the tenant phoned 911. Police arrived. And it was not until after the police arrived did the upstairs tenants, and presumably their child or children, come outside to see what was going on. "The upstairs people had nothing to do with the altercation," she added.

Both parties spoke briefly about whether the tenant attended the rental unit without police escort as would have been required under the release order. However, the landlord did not present evidence regarding this occurrence or occurrences.

In her final submission, the landlord referred to an excerpt of a Crown Counsel Narrative (which the tenant submitted into evidence) in which some of the altercation details are described.

In her final submission, the tenant reiterated that there is no reason why the upstairs tenants ought to have any issues with what happened, given that they were not present at the altercation. Moreover, she testified that the children upstairs would not have witnessed anything in any event. (One of the children, a 5-year-old, apparently called the tenant "a fucking loser.")

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.

1. Are landlords entitled to an order under section 56 of the Act?

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 landlord's agent submitted that the upstairs tenants (and their children) are allegedly "scared with everything" and "intimidated and threatened." The tenant vehemently disputes this and argued on several occasions during the hearing that the upstairs tenants were not witness to the altercation.

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 prove, above and beyond the agent's submissions, that the tenant has done anything that may fall within any of the grounds within section 56(a) of the Act giving rise to a reason to issue an order.

Mere submissions by the agent that the upstairs tenants are somehow intimidated or scared, without those tenants' testimonies, is insufficient to prove that the tenancy ought to be ended under section 56 of the Act. Not a single witness attended the hearing to give evidence.

Moreover, I find it rather difficult to accept that the entire upstairs family is intimidated by the tenant because of the requirement to possibly attend court as witnesses, for an incident that is essentially a shoving and pushing match. Further, the landlords provided no first-hand evidence, documentary or oral, that the tenant at any point threw a lit cigarette at a child. The Crown Counsel Narrative is, other than being third-party hearsay evidence, insufficient to prove that the tenant conducted themselves in a manner that gave rise to a ground for eviction under section 56 of the Act. And, last, while the tenant admitted that she got into an altercation with the now-former tenant, the charges under section 266 of the *Criminal Code* have not been proven in court. As a former Crown Prosecutor, I am all too aware that there is a difference between charges, and a conviction, for a criminal offense.

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 onus of proving their application for an order under section 56 of the Act.

Accordingly, the landlords' application is dismissed, without leave to reapply.

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

In respect of the landlords' claim for recovery of 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 a dispute resolution proceeding 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 reimbursement of the filing fee, without leave to reapply.

Conclusion

I hereby 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: October 20, 2020

Residential Tenancy Branch