Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Singla Bros. Holdings Ltd. and
[tenant name suppressed to protect privacy]

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 Legal Counsel for the Landlord, the Tenant, and an occupant of the rental unit (the Occupant), all of whom provided affirmed testimony. As the Tenant acknowledged service of the Landlord's Documentary evidence, the Application and the Notice of Hearing and raised no concerns regarding service or timelines, the hearing therefore proceeded as scheduled and the Landlord's documentary evidence was accepted for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative 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

The Tenant and Occupant stated that due to the pandemic and a lack of a vehicle, they were unable to gather, serve and submit documentary evidence for consideration by the Landlord or myself in advance of the hearing as required and requested either an

adjournment or an extension of the evidence submission and service timelines, to allow them to serve and submit documentary evidence for consideration. Legal Counsel for the Landlord opposed both, stating that the Tenant had enough time to serve and submit documentary evidence.

Rule 10.5 of the Rules of Procedure states that the respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch (the Branch) as soon as possible and at least two days before the hearing. Canada Post tracking information shows that the Landlord's documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, was received by the Tenant on November 8, 2020, and the Tenant confirmed receipt on this date during the hearing. As a result, I find that the Tenant had two weeks to gather, serve, and submit their documentary evidence for consideration at the hearing.

Although the Tenant and the Occupant stated that they had difficulty gathering and submitting their evidence due to the pandemic and the lack of a vehicle, the pandemic has been ongoing for many months, and there is no evidence before me that the lack of a vehicle is new to either the Tenant or the Occupant. Further to this, I do not find that the mere existence of the pandemic or the lack of a personal vehicle is a reasonable excuse for failing to comply with timelines set out under the Act or the Rules of Procedure. As a result, I find that it was incumbent upon the Tenant to act diligently in gathering and serving any documentary evidence they wished to be considered at the hearing, and find that they had enough time to do so.

It is up to a party to prepare for a dispute resolution hearing as fully as possible and based on the above, I am satisfied that the Tenant's request for an adjournment and/or an extension to the service and evidence submission deadlines arises primarily out of their failure to act diligently in obtaining, submitting, and serving documentary evidence for consideration in advance of the hearing as required. I am also not satisfied that an adjournment will result in resolution of the matter, and suspect that the adjournment request is simply an attempt by the Tenant and Occupant to delay the proceedings. I am also not satisfied that an adjournment is required to allow the Tenant and Occupant a fair opportunity to be heard, as they had ample time to submit documentary evidence for my consideration, had they wished to do so, and are able to provide affirmed testimony for my consideration during the hearing. Finally, I find that there is significant prejudice to the Landlord in delaying the proceedings, as they are seeking an early end to the tenancy pursuant to section 56 of the Act.

Based on the above, I therefore dismissed the Tenant's request for an adjournment and/or an extension to the service and evidence submission deadlines and the hearing proceeded as scheduled based on the documentary evidence before me on behalf of the Landlord and the testimony provided by the parties and the Occupant during the hearing.

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 tenancy agreement in the documentary evidence before me states that the month to month (periodic) tenancy began on June 1, 2017, that rent in the amount of $2,000.00 is due on the first day of each month, and that a security deposit in the amount of $775.00 was paid. The parties acknowledged that these are the correct terms of the tenancy agreement; however, the Tenant stated that they had actually lived at the property for approximately 10 years and that there had been a previous tenancy agreement in place before the one before me was signed. Legal Counsel for the Landlord did not dispute this testimony.

Legal Counsel for the Landlord confirmed that the Landlord still holds the $775.00 security deposit and both parties confirmed that rent remains at $2,000.00 per month and is still due on the first. They also agreed that the Tenant rents an entire single-family dwelling under the tenancy agreement, which has four bedrooms and two bathrooms.

Legal Counsel for the Landlord stated that the Landlord is seeking to end the tenancy early pursuant to section 56(2)(a)(i)-(iv) of the Act, as the Tenant or a person permitted on the residential property by the Tenant has done 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 interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- 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

In support of these grounds, Legal Counsel for the Landlord stated that the Tenant, or occupants permitted on the property by the Tenant, have permitted the property to become unsightly and have turned the lower portion of the home into an unauthorized secondary suite, contrary to zoning bylaws, and despite the fact that the Landlord had the lower portion of the home legally decommissioned as a secondary suite in 2018, at their own expense and in order to comply with municipal bylaws. Legal Counsel for the Landlord stated that this has resulted in several letters from the municipality, bylaw infraction tickets, and fines to the Landlord, copies of which were submitted for my review and consideration along with photographs showing the state of both the interior and exterior of the property. Although they did not submit any documentary evidence in support of this position, Leal Counsel for the Landlord also argued that the RCMP have been involved at the property in relation to stolen property and illicit drugs. Finally, Legal Counsel for the Landlord argued that the use of a hotplate and microwave downstairs, combined with the extreme untidiness of the rental unit, poses a significant fire risk to the property. Legal Counsel for the Landlord pointed to a photograph in the documentary evidence before me in support of their argument that a fire safety risk exist.

Legal Counsel for the Landlord argued that it would be unreasonable, or unfair to the Landlord of the residential property, to now wait for a notice to end the tenancy under section 47 *[landlord's notice: cause]* to take effect, given the significant fire risk posed to the property, and the financial burden placed on the Landlord as the result of bylaw infraction fines, which may continue to be issued until the property is in compliance, something entirely within the control of the Tenant and the property occupants, not the Landlord. Legal Counsel for the Landlord also stated that a One Month Notice was not initially served and that the Landlord chose to proceed by way of an Application seeking an early end to the tenancy pursuant to section 56 of the Act, given the 14 day timeline for compliance with the bylaw infraction notices.

While the Tenant and Occupant acknowledged that the state of the rental unit and property had not been acceptable, they stated that it has since been significantly cleaned up. The Occupant also stated that when they moved into the property in January of 2019, it was in very poor condition due to belongings and refuse left behind

by previous occupants of the Tenant, which they themselves cleaned up, saving the Landlord this time and expense as well as preventing $5,000.00 in fines. The Tenant and Occupant disputed that there is any fire risk posed by the use of either a microwave or hotplate in the lower portion of the home, as they only plug them in when in use, which they were advised was acceptable by the bylaw officers. The Tenant and Occupant stated that they are also confused by the sudden concern by the Landlord over fire safety risk, as the lower portion of the home had neither a smoke detector nor a carbon monoxide detector, both of which have since been purchased and installed by the Occupant.

While the Tenant and Occupant acknowledged that a police incident at the property occurred, limited details were provided other than that the police were looking for a party who had not resided there in over three years and one roommate, who has since been removed from the property. Overall the Tenant and Occupant felt that it was not reasonable to end the tenancy by way of section 56 of the Act as the property has been cleaned, there is no fire risk, and the persons sought by the RCMP do not reside at the property. They also argued that they, along with three other occupants of the rental unit, will suffer significant hardship if the tenancy is terminated.

Legal Counsel for the Landlord pointed out that by the Occupants own admission, the state of the property was unsightly when they moved there in 2019, as a result of occupants permitted on the premises by the Tenant, which supports the Landlord's position, and argued that the sheer number of occupants at the property and their use of the lower portion of the home as a secondary suite, contrary to zoning bylaws, is both unreasonable and unlawful. Legal counsel for the Landlord also sought recovery of the $100.00 filing fee on behalf of the Landlord.

Analysis

Section 56 of the Act states that a tenancy may be ended early by a landlord without the need to serve a notice to end tenancy on the tenant if an arbitrator is satisfied that the tenant or a person permitted on the residential property by the tenant has 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 interest 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; or
- caused extraordinary damage to the residential property.

Section 56 of the Act also requires that the arbitrator be satisfied that 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.

Although section 56 of the Act allows Landlords to end a tenancy without the need to serve a notice to end tenancy under section 47 of the Act, in certain circumstances and where it would be unreasonable, or unfair to the landlord or other occupants of the property to wait for a One Month Notice to End Tenancy for Cause to be served and take effect under section 47 of the Act, section 56 of the Act is not intended to expedite matters of possession for a Landlord who could reasonably have served and enforced a One Month Notice, but chose not to. While I accept that the Landlord may have cause under section 47 of the Act to end the tenancy by way of a One Month Notice, for the following reasons I am not satisfied that they have grounds to end the tenancy early pursuant to section 56 of the Act.

Legal Counsel relied on their position that it would be unreasonable, or unfair to the Landlord to wait for a notice under section 47 of the Act to be served and take effect as the Landlord had only 14 days from the date the notices of bylaw infraction were issued to bring the property into compliance before facing fines. However, the bylaw infraction notices are dated September 17, 2020, and the Application seeking an early end to the tenancy as a result of these infractions was not filed by the Landlord until October 26, 2020, more than one month after the issuance of the bylaw infraction notices. As a result, I find that the Landlord had more than enough time to have served a One Month Notice, should they have wished to do so. Further to this, the hearing of the Landlord's Application for an early end to the tenancy was not scheduled to take place until November 24, 2020, more than two months after the initial bylaw infraction notices were served, and I therefore find that had the Landlord simply served a One Month Notice, they could have ended the tenancy as early as October 31, 2020, depending on when the notice to end tenancy was served and whether it was disputed by the Tenant.

As a result of the above, I do not find that it would be have been unreasonable, or unfair to the Landlord to have waited for a notice under section 47 to be served and take effect. I also do not accept that section 56(2)(b) of the Act applies on the basis that the Landlord had only 14 days to bring the property into compliance or face further fines and actions, as the Landlord did not immediately seek an early end to the tenancy under section 56 of the Act, either upon issuance of the bylaw infraction notices or 14 days later when the Tenant had not brought the property into compliance, and find that the Landlord would have faced fines regardless of whether they proceeded by way of a One Month Notice or a section 56 Application, given the tight timelines.

Legal Counsel also argued that the risk of fire meets the requirement set out under section 56(2)(b) of the Act. I disagree. The Tenant and Occupant denied that any fire risk exists and stated that they were simply advised to plug in things such as the hot plate and coffee maker only when in use by bylaw officers. Although Legal Counsel for the Landlord argued that the use of the hot plate constitutes a serious fire risk, given the state of the rental unit, no documentary evidence was submitted to support this allegation other than a poor quality photograph showing a hot plate in a cluttered kitchen area and copies of a bylaw infractions for zoning, an illegal suite, and an unsightly property. As a result, I find Legal Counsel's assertion that any real or serious fire risk exists at the property rented to the Tenant under the tenancy agreement as a result of use of a microwave and/or hotplate at the rental unit is speculative at best.

Based on the above, I am not satisfied that the Landlord has grounds under section 56 of the Act to end the tenancy early as I am not satisfied that 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, as required by section 56(2)(b) of the Act. I therefore dismiss the Application, including the Landlord's request for recovery of the $100.00 filing fee, without leave to reapply.

Conclusion

The Landlord's Application seeking an early end to the tenancy under section 56 of the Act and recovery of the filing fee is dismissed without leave to reapply. I therefore order that the tenancy continue in full force and effect until it is ended by the parties in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 25, 2020

Residential Tenancy Branch