



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 01, 2020 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

The Landlord appeared at the hearing with E.B. as a witness. The Tenant appeared at the hearing with Z.G. as a witness. The witnesses were not involved in the hearing until required. I explained the hearing process to the parties who did not have questions when asked. The parties and witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed receipt of the hearing package and Landlords’ evidence.

The Landlord testified that he did not receive the Tenant’s evidence. I heard the parties on this issue and told them I would decide service in my written decision. I do not find it necessary to decide service as the decision would be the same whether the Tenant’s evidence was admitted or excluded.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the Landlords’ documentary evidence and all oral testimony of the parties and witnesses. I will only refer to the evidence I find relevant in this decision.

I do note that the hearing was somewhat rushed at the end as I had another hearing at 11:00 am. However, I told the Landlord around 10:30 am that I had another hearing at 11:00 am and that the Tenant needed to have an opportunity to respond to the Landlords' evidence. I also told the Landlord around 10:30 am that we would have to adjourn if the hearing did not conclude by 10:50 am. After hearing from the Tenant and Z.G., I told the Landlord he would usually have an opportunity to reply but that we would have to adjourn the hearing if he wished to reply as it was almost 11:00 am. The Landlord said he did not wish to adjourn to reply. Given this, I ended the hearing and did not adjourn to hear a reply.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified that he owns the rental unit which currently has five people living in it. The parties agreed they have a verbal tenancy agreement between them. The parties agreed the Tenant moved into the rental unit in February 2020. The parties agreed rent is \$600.00 per month and that the Tenant pays rent to the Landlord directly. The Landlord testified that rent is due on the first day of each month. The Tenant testified that it is his understanding rent is due by the 5th of each month. The parties agreed the Tenant did not pay a security or pet damage deposit.

A summary of the issues raised by the Landlord is as follows. He has received complaints from neighbours about noise from the rental unit address. The Tenant has caused two other tenants to move out of the rental unit address due to noise. The Tenant sings and shouts until five in the morning. The Tenant sends nasty messages to other tenants. One tenant left the rental unit address because of the Tenant threatening him. E.B. told him about an incident where the Tenant shut another tenant's finger in the door. E.B. has recordings of the Tenant making noise. The Tenant is bothering all other tenants. The Tenant is smoking inside which is not permitted.

The Landlord testified that he spoke to the Tenant about these issues, told him to stop and told him to be nice.

The Landlord testified that the Tenant threatened him. I asked the Landlord what the Tenant said. The Landlord testified that the Tenant said, "Oh I'm going to call the police and why are you in the building". The Landlord testified that he knocked on the door, the Tenant wouldn't open the door and the Tenant called 9-1-1 saying the Landlord was threatening him.

I asked the Landlord why the issues are such that it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end the tenancy under section 47, a One Month Notice, to take effect. The Landlord said he gave the Tenant a notice and the Tenant said he is not going to leave. The Landlord said he is okay with giving the Tenant one month notice.

E.B. testified as follows. The other tenants all have issues with the Tenant. The Tenant disrupts others by singing opera, yelling and stomping. The tenant below the Tenant could not sleep due to the Tenant singing. He would tell the Tenant to stop but the Tenant would start again 15 minutes later. There have been eight months of problems with the Tenant including the Tenant singing, yelling and causing multiple tenants to leave.

E.B. testified about an incident where the Tenant slammed another tenant's finger in the door.

E.B. testified about an incident where he attended the Tenant's room, found urine spilled on the floor and had to clean it up because the Tenant was just going to leave it soaking into the carpet.

The Tenant testified as follows in reply. W. is another tenant of the rental unit address. In relation to the finger incident, he did not do it on purpose, it was W.'s finger and W. was fine. The urine on the floor was from W. He does call police at times when necessary. He did call police on the Landlord because the Landlord was on the property without notice, banging on the door and made physical gestures towards him. He is friends with W. and another tenant. W. is also loud. All of the tenants act the same way, but he is being singled out. Others smoke in the rental unit address. He has been woken up by other tenants multiple times. He does not slam doors. He has never threatened harm to others. He is not causing noise issues. He does not agree his behaviour has caused two other tenants to move out because he never received a warning about this. A lot of what has been said is not true.

Z.G. testified as follows. She attends the rental unit address three to four times a week. There is an ongoing problem with other tenants making noise, the Tenant is not the only person making noise. The Tenant has complained to her about other tenants causing noise. Everyone in the rental unit address smokes. Other tenants also show a lack of respect for people living in the rental unit address.

In response to a question from the Tenant, E.B. testified that he has not received a noise complaint about the Tenant for a month. E.B. also testified that he has not witnessed the Tenant damage the rental unit address.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

Here, the Landlord has failed to meet the two-part test primarily because, when asked, the Landlord said he is okay with giving the Tenant one months notice. The Landlord did not explain why it would be unreasonable or unfair to require the Landlord or other occupants to wait for a One Month Notice to take effect. Given the Landlord's response, I am not satisfied it would be unreasonable or unfair to require the Landlord or other occupants to wait for a One Month Notice to take effect. Therefore, the Landlord has failed to prove the second part of the test.

I note that the Landlord said the Tenant was given a notice and said he would not leave. If the Tenant is served a One Month Notice pursuant to section 47 of the *Act* and will not leave, the appropriate course of action is to seek an Order of Possession based on the One Month Notice. The appropriate course of action is not to seek an early end to the tenancy under section 56 of the *Act* in a situation that is not urgent.

I also note that the Landlord has failed to prove a circumstance that would justify ending the tenancy pursuant to section 56 of the *Act*. Ending a tenancy early pursuant to section 56 of the *Act* is reserved for the most serious of circumstances. The only allegations serious enough to warrant ending the tenancy early here are, possibly the allegation of "nasty messages" and the allegation of the Tenant threatening another tenant who moved out of the rental unit. However, I do not have "nasty messages" before me as evidence. Further, the only evidence I have before me is from the Landlord and E.B. I do not have evidence from the other tenant who moved out. The Tenant denied threatening harm to others. I am not satisfied in the absence of further evidence that the Tenant has threatened harm to others. The other circumstances alleged, even if accepted, are not the type of circumstances that justify ending the tenancy early. They are all circumstances that should be dealt with through a One Month Notice.

Given the above, I am not satisfied the Landlord has proven he is entitled to an Order of Possession pursuant to section 56 of the *Act* and dismiss this request without leave to re-apply.

Given the Landlord was not successful, I decline to award the Landlord reimbursement for the filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

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 23, 2020

Residential Tenancy Branch