



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET, FFL

Introduction

The landlord applied for orders under section 56 of the *Residential Tenancy Act* ("Act") and to recover the cost of the filing fee under section 72 of the Act.

Both parties, along with a witness for the landlord, attended the hearing on February 2, 2021 which was held by teleconference. No issues of service were raised by the parties.

Issues

1. Is the landlord entitled to orders under section 56 of the Act?
2. Is the landlord entitled to recover the filing fee under section 72 of the Act?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began in August 2020, monthly rent is \$800.00, and the tenant paid a security deposit of \$400.00. A copy of the written tenancy agreement was submitted into evidence.

The landlord testified that the tenant, who lives with other occupants in the property, has caused lots of issues, primarily involving noise, which disturbed another tenant, "Jeff." Jeff submitted an itemized list to the landlord, which was in evidence, of noise incidents spanning a time frame of October 4, 2020 to January 12, 2021. The dates and times (which, rather peculiarly, seem to almost all occur on the hour or half hour) itemize disturbances "which are mostly knocks" on the wall in the middle of the night.

The landlord testified that the tenant has been drunk and disorderly and he “can’t be talked to or reasoned with.” The other tenant Jeff is apparently threatening to leave, and there is a former tenant who has already left due to the tenant’s “performance.”

The tenant testified that he gave his notice to end the tenancy on January 18, 2021, and that he is already in the process of moving out. He remarked that he is likely to be gone in a day or two, and just needs a friend to help him move his TV, a fish tank, and a frog tank. As for the alleged conduct, he testified that he has letters from other people in support of him. He said that the landlord was “camping out in the dark, watching us, interrogating us.” The landlord has, he explained, interrogated him and the other tenants and has used her dog in an intimidating manner. Finally, he testified that he has had a target on his back ever since he yelled at the landlord to get out of his room.

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.

Section 56 (1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

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, there are clearly shenanigans occurring amongst the tenants of this property. The tenant has, according to the landlord and the third-party letters, a drinking problem and has caused much noise and disturbance. However, the documentary evidence of the other tenant Jeff was not corroborated in any way. Jeff did not attend the hearing to verify the contents of the letter, and, I find it rather suspect that the times of the alleged noise almost entirely occur on the hour or the half hour.

In my experience, repeated noises of the sort being complained of here occur at random times, with an unpredictable pattern. In this case, the “log” of noise occurrences appears to be either rough approximations, or simply fabrications. They do not appear to have been recorded contemporaneously with the actual incidents. In short, I am not satisfied that the landlord’s evidence – which is entirely hearsay and uncorroborated – proves that the tenant engaged in behavior that meets any of the types of conduct listed in section 56 of the Act. Nor, I should add, do I find much credibility in the tenant’s description of the landlord “camping out in the dark, watching us.” There is no evidence of this.

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 landlord has not met the onus of proving her claim for an order under section 56 of the Act. Accordingly, I dismiss the landlord’s application without leave to reapply.

As the landlord was unsuccessful in her application, I decline to grant recovery of the application filing fee under section 72 of the Act.

Conclusion

I dismiss the landlord's 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 Act.

Dated: February 2, 2021

Residential Tenancy Branch