



Dispute Resolution Services

Page: 1

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 January 11, 2021 (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 K.D. to assist. The Tenants appeared at the hearing late, after preliminary matters had been addressed. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord's evidence.

K.D. testified that the hearing package and evidence were sent to the Tenants by registered mail to the rental unit on January 16, 2021. K.D. confirmed Tracking Numbers 1 and 2 relate to this. The Landlord submitted customer receipts and further evidence of service. I looked Tracking Numbers 1 and 2 up on the Canada Post website which shows the packages were delivered January 18, 2021.

K.D. testified that the evidence uploaded after January 16, 2021 was put in the Tenants' mailbox the same day it was uploaded.

When the Tenants called into the hearing, Tenant A.S. confirmed the Tenants received the hearing package and Landlord's evidence. Tenant A.S. raised an issue about a Proof of Service form completed by the Landlord which states that the matter is the Tenants' Application for Dispute Resolution. I did not find the issue relevant because

Tenant A.S. acknowledged receipt of the registered mail packages and given the evidence of service submitted.

I note that I am satisfied based on the evidence of service before me that the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88(c), 88(f) and 89(2)(b) of the *Residential Tenancy Act* (the "Act"). I am also satisfied based on the evidence of service provided that the Landlord complied with the Order of the Executive Director dated June 26, 2019 in relation to methods of service permitted for expedited hearings. I am also satisfied based on the evidence of service provided that the Landlord complied with rule 10.3 of the Rules of Procedure (the "Rules") in relation to the hearing package and first set of evidence.

In relation to the evidence submitted after January 16, 2021, I am not satisfied the Landlord complied with rules 10.2 or 10.3 of the Rules in relation to the timing of service. This evidence includes a statement from a neighbour dated February 02, 2021 which was submitted February 02, 2021. I am satisfied based on the testimony of K.D. that this was put in the Tenants' mailbox February 02, 2021. I am satisfied the Tenants received the statement because Tenant A.S. confirmed receipt of the Landlord's evidence at the hearing. Further, K.D. referred to the statement during the submissions and the Tenants did not indicate that they did not receive this statement and did not raise any issues in relation to service of this statement. In the circumstances, I have considered the statement.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted on or before January 16, 2021, the statement from the neighbour and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

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

A written tenancy agreement was submitted in evidence. K.D. testified that this written agreement is accurate and represents the agreement between the parties in relation to this tenancy.

Tenant A.S. disputed that the written tenancy agreement in evidence represents the agreement between the parties and testified that there is a different written tenancy agreement between the parties.

All parties agreed the Tenants are tenants of the rental unit and that there is a tenancy agreement between the parties.

K.D. testified as follows. A fight occurred between Tenant W.S. and the Landlord's son, K.D.'s brother, on January 11, 2021. K.D.'s brother was going to work. Tenant W.S. approached and made racial slurs. K.D.'s mother came out and Tenant W.S. swore at her. Tenant W.S. swung at K.D.'s brother. K.D. came out and observed this. Tenant W.S. punched K.D.'s brother in the face and head. Tenant W.S.'s son came out and punched K.D.'s brother as well. Tenant W.S. told his son to go get a gun from inside. The police were called. The Tenants and Tenant W.S.'s son left before the police arrived. Tenant W.S. has threatened K.D.'s brother. Tenant W.S. told K.D.'s brother he would burn their house. The Landlord and his family live beside the Tenants and are scared for their safety.

It is my understanding based on the testimony of K.D. that the Landlord and Tenants live beside each other and that the January 11, 2021 incident occurred on either the Landlord's or Tenants' property.

Tenant A.S. testified as follows. A.S. was washing dishes and looked out and saw the Landlord's son approach Tenant W.S. Tenant W.S. did swear at K.D.'s mother. The Landlord's son punched Tenant W.S. first. Tenant W.S. yelled for his son, not a gun. The Tenants do not have guns. There were three people on Tenant W.S. at one point. Tenant W.S.'s son hit the Landlord's son and kicked him in the head. The Tenants never threatened the Landlord or his family.

The statement from the neighbour states that they heard an altercation, saw people outside yelling and then saw Tenant W.S. punch the Landlord's son in the head.

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, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Based on the testimony of the parties and the statement of the neighbour, I am satisfied a physical altercation between Tenant W.S. and the Landlord's son occurred on the property of the Landlord or Tenants on January 11, 2021. The parties disagreed about who started the physical altercation. I am satisfied based on the testimony of K.D. and the statement of the neighbour that it is more likely than not that Tenant W.S. started the physical altercation. I am also satisfied based on the testimony of both parties that Tenant W.S.'s son punched and kicked the Landlord's son.

Given I am satisfied it is more likely than not that Tenant W.S. started the physical altercation and am satisfied that Tenant W.S.'s son punched and kicked the Landlord's

son, I am satisfied Tenant W.S. and a person allowed on the property by the Tenants significantly interfered with or unreasonably disturbed the Landlord's son as well as more broadly the Landlord and his family.

I am satisfied it would be unreasonable and unfair to require the Landlord to wait for a One Month Notice to End Tenancy for Cause issued pursuant to section 47 of the *Act* to take effect because there was a physical altercation between the parties involving punching and kicking.

I am satisfied the Landlord has met the onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit effective two days after service on the Tenants.

Given the Landlord was successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act* and issue the Landlord a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to reimbursement for the \$100.00 filing fee. The Landlord is issued a Monetary Order in this amount. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 08, 2021

Residential Tenancy Branch