



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUNKELD PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ET, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, for an early end to the tenancy, and to recover the fee for filing the Application for Dispute Resolution.

The Landlord stated that on April 07, 2021 the Dispute Resolution Package was posted on the door of the rental unit. The Tenants acknowledged receipt of these documents.

On March 31, 2021 and April 01, 2021, the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that all of this evidence, with the exception of a police report, was posted on the Tenants' door on April 07, 2021. The Tenants acknowledged receiving the evidence that was posted on the door and it was accepted as evidence for these proceedings. I note that the police report was not accepted as evidence, as it was not served to the Tenants.

On April 16, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that the evidence submitted on April 16, 2021 was simply a duplicate of evidence previously submitted to the Residential Tenancy Branch and served to the Tenant. On the basis of that information, I have not viewed the evidence submitted on April 16, 2021.

On April 09, 2021 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was delivered to the Landlord's business address on April 12, 2021. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should this tenancy end early and, if so, should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord and the Tenants agree that:

- The tenancy began on October 12, 2020;
- When this tenancy began the Agent for the Landlord told the Tenants she was the property manager;
- When this tenancy began the Agent for the Landlord told the Tenants she was not an owner of the company named as the Landlord;
- She is an owner of the company named as the Landlord;
- At some point during the tenancy the Tenants became upset after learning the Agent for the Landlord had not been forthcoming about the identity of the Landlord;
- On February 13, 2021 the male Tenant had a telephone conversation with the Agent for the Landlord in which he accused her of not being truthful about the true identity of the Landlord and issues with his vehicle;
- The male Tenant was angry during their conversation on February 13, 2021;
- The male Tenant did not make any threats during their conversation on February 13, 2021;
- On February 13, 2021 the Agent for the Landlord came to the residential property, at which time the female Tenant attempted to speak with her about the true identity of the Landlord;
- On February 15, 2021 the Agent for the Landlord and the female Tenant had a lengthy telephone conversation;
- On December 06, 2020 the Agent for the Landlord had a conversation with the Tenant regarding smoking cannabis;

- The conversation on December 06, 2020 was not disrespectful;
- The Landlord served the Tenants with a One Month Notice to End Tenancy for Cause;
- The Tenants filed an Application for Dispute Resolution to dispute the One Month Notice to End Tenancy for Cause; and
- A hearing has been scheduled for June 20, 2021 to consider the merits of the One Month Notice to End Tenancy for Cause.

The Landlord submitted a recording of the conversation between the Agent for the Landlord and the male Tenant on February 13, 2021.

The Landlord submitted a recording of the conversation between the Agent for the Landlord and the female Tenant on February 13, 2021.

The Landlord submitted a recording of the conversation between the Agent for the Landlord and the female Tenant on February 15, 2021.

The Landlord submitted a recording of the conversation between the Agent for the Landlord and the Tenant on December 06, 2020.

In regard to the conversation she had with the female Tenant on February 13, 2021, the Agent for the Landlord stated that:

- When the female Tenant first approached her on the residential property, she was willing to discuss the Tenant's concern about the true identity of the Landlord;
- She subsequently told the Tenant that she did not wish to discuss the issue, because the Tenant was becoming upset;
- The Tenant did not threaten her; however, she was waving her arms in a manner that frightened the Agent for the Landlord;
- The Tenant prevented her from opening the gate;
- She was afraid so she locked herself in the garage, which is not part of the tenancy; and
- The Tenant attempted to prevent her from closing the garage door.

In regard to the conversation she had with the Agent for the Landlord on February 13, 2021, the female Tenant stated that:

- The Agent for the Landlord was not willing to discuss the true identity of the Landlord when the Agent for the Landlord came to the property on February 13, 2021;

- She was not aggressive and she made no threats toward the Landlord;
- She may have been waving her hands while she was speaking, but her actions were not threatening;
- At one point the Agent for the Landlord left the yard and she closed the gate because she thought the Agent for the Landlord was leaving the property;
- She did not interfere with the Agent for the Landlord coming back into the yard through that gate;
- She never prevented the Agent for the Landlord from entering the garage or from closing the garage door; and
- She continued to speak to the Agent for the Landlord even after the Agent for the Landlord locked the garage door.

In regard to the conversation she had with the female Tenant on February 15, 2021, the Agent for the Landlord stated that:

- At the start of the conversation she informed the Tenant that she was an owner of the company;
- The Tenant began shouting during the latter portion of the conversation;
- The Tenant interrupted her 47 times during that conversation;
- She asked the Tenant to stop shouting on 4 occasions during that conversation;
- The Tenant did not threaten her during this conversation; and
- She eventually concluded that the conversation was “going nowhere”.

In regard to the conversation she had with the Agent for the Landlord on February 15, 2021, the female Tenant stated that:

- She thinks the Landlord told her that she was an owner during this conversation;
- She was upset during a part of this conversation but she made no threats; and
- She also concluded that the conversation was “going nowhere”, as the “truth was not coming out”.

The Agent for the Landlord stated that wants the tenancy to end prior to the hearing on June 20, 2021 because she is afraid of the Tenants’ behaviour and she no longer comes to the property because it ends up in a “shouting match”.

Analysis

Section 56(1) of the Act stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the Act and the Landlord may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the Act authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 to take effect.

I make no finding on whether the Landlord has grounds to end this tenancy pursuant to sections 56(2)(a) of the *Act*. Even if I concluded that there were grounds to end the tenancy pursuant to section 56(2)(a) of the *Act*, I find that the Landlord has failed to establish that an Order of Possession should be granted pursuant to section 56(2)(b) of the *Act*.

I have listened to all of the recordings submitted in evidence by the Landlord.

While I accept that the male and female Tenant were angry in the two conversations recorded on February 13, 2021, they do not threaten to harm the Landlord or the residential property during either conversation.

I favor the testimony of the female Tenant, who stated that when she first approached the Agent for the Landlord on the residential property, she was not willing to discuss the Tenant's concern about the true identity of the Landlord, over the testimony of the Agent for the Landlord who stated that she was willing to discuss the Tenant's concerns when she was first approached by the Tenant. I favor the testimony of the female Tenant because her version is supported by the recording of that conversation.

I find that the Landlord has submitted insufficient evidence to establish that the female Tenant physically threatened her during their interaction on February 13, 2021. While I accept that the Agent for the Landlord was afraid and she opted to lock herself in the garage to avoid the Tenant, I am not satisfied that she was in any danger from the female Tenant. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates the Agent for the Landlord's testimony that the Tenant physically prevented her from closing the garage door or opening the gate or that refutes the female Tenant's testimony that she did not interfere with the Agent for the Landlord opening the gate or closing the garage door.

While I accept that during the lengthy conversation between the female Tenant and the Agent for the Landlord that occurred on February 15, 2021 became somewhat upset at times, I find that there is nothing in that conversation that would cause a reasonable person to concern for her safety or for the safety of the property.

I find there is nothing in the conversation that occurred on December 06, 2020 that would cause anyone to concern for their safety or for the safety of the property.

In the absence of evidence that an agent for the Landlord, another occupant, or the Landlord's property is at imminent risk, I do not find 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 to take effect. I therefore dismiss the Landlord's application to end the tenancy early and for an Order of Possession.

The Landlord retains the right to attempt to end the tenancy pursuant to section 47 of the *Act*.

I find that the Landlord has failed to establish the merit of the Application for Dispute Resolution and I dismiss their application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has failed to establish grounds to end this tenancy early, pursuant to section 56 of the *Act*, and the application for an Order of Possession is dismissed.

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

Dated: April 21, 2021

Residential Tenancy Branch