



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 March 04, 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. The Tenants appeared at the hearing with K.M. for support. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. There was no evidence from the Tenants before me. I addressed service of the hearing package and Landlord’s evidence and the Tenants confirmed receipt of these.

The Tenants advised that they submitted text messages as evidence. I did not have these before me. The Landlord had received copies of the text messages. I told the Tenants to let me know if the text messages were relevant to the issues being addressed during the hearing and I would determine what to do at that point.

I note that at the end of the hearing, the Tenants and K.M. said they thought this hearing was about a One Month Notice to End Tenancy for Cause. I had outlined the Application at the start of the hearing. Further, K.M. acknowledged receipt of the Notice of Dispute Resolution Proceeding and I pointed out that the reason for the hearing is stated on page three of the Notice. As well, the Landlord’s evidence refers to this being an expedited hearing to end tenancy.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted as well as 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. The written agreement is for a tenancy starting January 15, 2017 for a fixed term ending May 31, 2017 with the tenancy then becoming a month-to-month tenancy. The Landlord testified that this is the accurate tenancy agreement. Tenant E.C. testified that this is not the accurate tenancy agreement and that the parties signed a new tenancy agreement recently. The parties agreed there is a tenancy agreement between them.

The Landlord testified as follows. The Landlord attended the rental unit with a witness on February 26, 2021. The Landlord and witness were trying to do an inspection of the rental unit. During an interaction with Tenant E.C., Tenant E.C. became verbally and physically abusive. Tenant E.C. pushed the Landlord out the door of the rental unit. The Landlord and witness went towards the backyard. Tenant E.C. blocked the Landlord from going to the backyard. Tenant E.C. verbally and physically assaulted the Landlord outside. Tenant E.C. pushed the Landlord backwards with two hands. The Landlord called 9-1-1 and RCMP attended. The Landlord wants to end the tenancy for the health and safety of themselves and others who need to attend the rental unit.

Tenant N.G. testified as follows. Tenant N.G. was not present for the alleged assault but finds it hard to believe Tenant E.C. assaulted the Landlord. The Landlord was asked to leave the property and the Landlord refused to leave which is when the alleged assault occurred. The Landlord simply wants the house vacant so it can be renovated and sold.

Tenant E.C. testified as follows. The Landlord showed up to the rental unit saying the Landlord was selling the house. The Landlord was coming at Tenant E.C. giving Tenant E.C. an ultimatum to move out or the Landlord would evict the Tenants for

damage. The Landlord was “baiting” Tenant E.C. The Landlord was recording Tenant E.C. without Tenant E.C. knowing. The Landlord was taunting Tenant E.C. The Landlord gave Tenant E.C. an eviction notice. Tenant E.C. told the Landlord to get out of the rental unit and the Landlord would not. Tenant E.C. shut the door. Tenant E.C. did not assault the Landlord. Tenant E.C. did swear at the Landlord because Tenant E.C. was mad and frustrated. Tenant E.C. blocked the Landlord from going into the backyard but did not assault the Landlord outside. The RCMP said there was no assault and did not “press charges”.

There was a discussion between me and the parties about notice of entry for February 26, 2021. Tenant E.C. acknowledged at the end of this discussion that the parties had agreed that the Landlord could enter the rental unit on February 26, 2021.

I asked the Tenants if any of the text messages served on the Landlord were relevant to the issues being discussed. Tenant E.C. and K.M. read out some of the text messages which related to access. K.M. acknowledged that all the text messages relate to access to the rental unit.

I did not ask the Tenants to submit the text messages served on the Landlord as I did not find it necessary to look at them given K.M. acknowledged they all relate to access to the rental unit and given Tenant E.C. acknowledged that the parties agreed the Landlord could access the rental unit on February 26, 2021, the relevant date. I do not find the access issue sufficiently relevant such that I need to see the text messages.

The Landlord submitted the following relevant evidence:

- Written submissions
- Voice recordings. The voice recording from February 26, 2021 is of the interaction between the Landlord and Tenants. I note the following from the recording. The Landlord remains calm throughout. I do not hear the Landlord raising their voice at any point. Throughout the interaction, Tenant E.C. is escalating things, swearing at the Landlord, raising their voice, yelling at the Landlord, calling the Landlord names and being confrontational. At one point, both Tenants yell at the Landlord to get out of the rental unit. Near the end, the Landlord talks about going to the backyard and Tenant E.C. is yelling at the Landlord.
- A signed witness statement from J.O. stating in part as follows. J.O. attended the rental unit with the Landlord on February 26, 2021. Tenant E.C. and the Landlord were discussing the tenancy agreement and the conversation became

very heated. Tenant E.C. started verbally abusing the Landlord. Tenant E.C. started yelling and Tenant N.G. "entered the yelling match". Tenant N.G. told the Landlord to get out of the house. Tenant E.C. "made personal contact and laid his hands on both of [the Landlord's] shoulders at the door." The Landlord and J.O. went to access the backyard. Tenant E.C. came outside and confronted the Landlord face to face. Tenant E.C. continued the verbal abuse and then pushed the Landlord with two hands on his chest. The Landlord called 9-1-1.

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 in a dispute resolution hearing is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Landlord and Tenant E.C. disagree about what occurred between them on February 26, 2021. Therefore, I have considered what further evidence there is before me to support each version of events.

The Landlord has submitted the signed witness statement of J.O. and the voice recording, both of which support the Landlord's version of events.

The Tenants have not submitted evidence to support Tenant E.C.'s version of events. I do not find that the testimony of Tenant N.G. supports Tenant E.C.'s version of events in relation to the alleged assaults because Tenant N.G. acknowledged they were not present for the alleged assaults and therefore I am not satisfied Tenant N.G. knows whether the alleged assaults occurred or not.

In the circumstances, I am satisfied the Landlord has proven on a balance of probabilities through the Landlord's own testimony, the signed witness statement of J.O. and the voice recording that Tenant E.C. assaulted the Landlord. Based on these pieces of evidence, I am satisfied it is more likely than not that Tenant E.C. assaulted the Landlord.

Given I am satisfied Tenant E.C. assaulted the Landlord, I am satisfied Tenant E.C. has significantly interfered with or unreasonably disturbed the Landlord. Further, I am satisfied it would be unfair and unreasonable to require the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect given the circumstances involve a physical assault.

I am satisfied the Landlord has met their 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 which will be 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*. The Landlord is issued a Monetary Order for \$100.00.

If the Tenants vacate the rental unit prior to the end of April, the Landlord should reimburse the Tenants for rent paid for any days the Tenants are no longer living in the rental unit. If either party believes they are entitled to compensation at the end of the tenancy, they can file an Application for Dispute Resolution seeking compensation.

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 and 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: April 01, 2021

Residential Tenancy Branch