



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed March 9, 2021, wherein the Landlords sought an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act* (the "Act") and recovery of the filing fee.

The hearing of the Landlords' Application was scheduled for 9:30 a.m. on April 12, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The new owners of the rental property, F.M. and L.N. also called into the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to an early end to tenancy?
2. Should the Landlords recover the filing fee?

Background and Evidence

A.T. testified on behalf of the Landlords. A.T. stated that the tenancy began on June

15, 2020. Monthly rent is \$3,000.00 per month due on the 15th of the month. He confirmed that the rental unit is a single-family dwelling.

A.T. testified that the rental home sold and the new owners, F.M. and L.N. took possession on March 31, 2021. The Landlords issued a 2 Month Notice to End Tenancy on March 2, 2021 with an effective date of May 31, 2021. A hearing on the validity of that Notice is scheduled for June 8, 2021.

The reasons giving rise to the Landlords' request to end the tenancy relate to an incident which occurred on March 8, 2021 at 7:30 p.m. A.T. stated that he attended the rental unit to speak to the Tenants about the new owners request to obtain an appraisal. A.T. testified that he attended the rental unit at this time to serve the Tenants with a 24-hour Notice of Entry (the "24-hour Notice") regarding the appraisal on March 9, 2021. A.T. stated that A.F. opened the door and then his father, M.F., came to the door at which time A.T. handed M.F. the 24-hour Notice.

A.T. further stated that M.F. refused to accept the 24-hour Notice such that A.T. put it in the mailbox. A.T. then asked M.F. what his plan was in terms of moving as the new owners wanted to take possession of the house. A.T. stated that the conversation then turned into an argument. A.T. stated that the Tenants' two sons, M.F. and A.F. came to the door and M.F. tried to hold his sons back. A.T. claimed that he was about 20 feet away at which time the younger son, A.F. broke out of his father's arms and then punched A.T. in the back of the head and knocked him out. A.F. stated that he was by himself and does not know how long he was unconscious. He further stated that when he came to, a neighbour came to his aid and the neighbour called the ambulance.

A.F. also testified that he was in a coma in October 2019 as a result of an earlier head injury and as such is more susceptible to head trauma. The Landlords provided a copy of the emergency room report which was prepared after A.F. attended the hospital on the same date as the incident.

A.F. testified that there was a police report although a copy of the report was not provided in evidence before me. A.T. confirmed that A.F. has not been charged with assault.

In response to the Landlord's testimony, the Tenant A.F., testified as follows. He stated that he was at the rental unit when A.T. attended the rental unit. A.F. stated that the Landlord did not try to serve a 24-hour Notice and was lying about this.

A.F. denied getting into an argument with A.T. on March 8, 2021. He submitted that the Landlord was lying and making up stories because he simply wants to end the tenancy now that the property has sold. A.F. testified that the Landlord first issued a 1 Month Notice to End Tenancy for Cause; the Tenants applied to dispute this notice. They then received a 2 Month Notice to End Tenancy for Landlords' Use and the Tenants also disputed that notice. A.F. stated that both matters are scheduled for hearing before the Residential Tenancy Branch on June 8, 2021 (the file numbers for those matters are included on the unpublished cover page of this my Decision).

A.F. stated that A.T. was upset that he had to wait until June 8, 2021 for a hearing and that was why he was angry on March 8, 2021. In terms of the alleged incident, A.F. denied striking A.T. A.F. stated that A.T. attended the rental unit at 7:30 p.m., which at that time of year was when it was already dark. A.F. confirmed that he answered the door when the Landlord rang the doorbell. He stated that A.T. and the Tenant's father, M.F. were outside, and A.T. was yelling and threatening M.F. A.F. then opened the door and told his dad to come back inside. A.T. further testified that M.F. (his brother) tried to take a video of what A.T. was doing and A.T. then tried to grab the phone. They all went back inside and M.F. called the police.

A.F. stated that it was A.T. that was yelling and threatening. He stated that this is all just A.T. trying to get rid of them. A.F. confirmed that the police attended, spoke to both parties separately and did not press any charges. A.F. stated that he wasn't even outside except when he went out to tell his dad to come back in while A.T. was swearing at him.

M.F. also testified on behalf of the Tenants. He confirmed he was at the rental unit on March 8, 2021. He stated that A.T. came to the house without any prior notice and knocked on the door after dark. M.F. stated that he was looking out the window and could hear A.T. talking loudly to his father, M.F. M.F. then came outside and tried to take a video and A.T. tried to take the cell phone away.

M.F. stated that A.F. did not strike A.T. He testified that A.F. did not even go outside and claimed he just went to the door and asked his father to come back inside. M.F. stated that he was the one who called the police. He confirmed that there was no one else present besides A.T., his father M.F. and his brother A.F. M.F. confirmed that he spoke to the police. He also confirmed that he knew that A.T. told the police that A.F. hit him. M.F. stated that M.T. was lying.

In reply, A.T. confirmed that there was no one else present, besides the Tenant and his two sons.

Analysis

The Landlords seek an early end to this tenancy pursuant to section 56 of the *Act*, which reads as follows:

Application for order ending tenancy early

56 (1)A landlord may 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 [*landlord's notice: cause*], and

(b)granting the landlord an order of possession in respect of the rental unit.

(2)The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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.

(3)If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

[emphasis added in bold italics]

This is a two-part test and the Landlords *must* prove both parts on a balance of probabilities.

In this case, the Landlords allege the Tenant, A.F. assaulted the Landlord, A.T. by punching him in the head and rendering him unconscious some time after 7:30 p.m. on March 8, 2021. The Landlords provided a copy of the emergency room report which confirms A.T. was seen by an emergency room doctor at approximately 9:30 p.m. that evening; the report includes the following observations of A.T.:

- tenderness to the right temporal area, right parietal area and right frontal lobe;
- bruising on the right upper cheek;
- decreased sensation on the left side of the face;
- dizziness which impacts his gait;
- tenderness, abrasions and bruising to the left knee;
- abrasion to the left hand; and,
- abrasion to the left hip.

The Tenant, A.F. and M.F. testified in response to the Landlords' claims. A.F. denied hitting A.T. and claimed he was only outside briefly. M.F. also testified that A.F. did not assault A.T. There appear to have been no independent witnesses present at the material time.

While the police attended the scene, neither party provided a copy of the police report. Both parties agreed that charges were not laid against A.F.

On balance, I find it likely A.T. and A.F. were involved in a physical altercation. The medical evidence confirms that A.T. attended the emergency room shortly after he attended the rental unit. The emergency room report indicates he suffered injury to his head, left hand, knee and hip. These injuries are consistent with A.T.'s testimony that he was knocked out by A.F. as these injuries suggest he was struck and fell to the ground.

I therefore find, on a balance of probabilities, that the Landlords have proven the first part of the test, namely that the Tenant, A.F. significantly interfered with the Landlord, A.T. and seriously jeopardized his health and safety.

Section 56 requires that I also consider whether it would be unreasonable or unfair to the Landlords or other occupants to wait for a 1 Month Notice to End Tenancy for Cause to take effect. An Application pursuant to section 56 is extraordinary and to be successful a landlord must prove there is urgency to the request to end the tenancy.

The evidence confirms that the rental property has sold. The new owners took possession of the property on March 31, 2021. As such, the Landlord, A.T. no longer has any reason to attend the rental property as he is no longer the registered owner. I was not provided any evidence to support a finding that the Tenant, A.F. poses a risk to the new owners. On balance, I find the Landlords have failed to prove it would be unreasonable or unfair to wait for a 1 Month Notice to End Tenancy for Cause to take effect.

I therefore dismiss the Landlords' request to end this tenancy early. As the Landlords have been unsuccessful, I also dismiss their request to recover the filing fee.

Conclusion

The Landlord's application is dismissed. The tenancy shall continue until ended in accordance with the Act.

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 14, 2021

Residential Tenancy Branch