



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST FOUNDATION SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ET, FFL

Introduction

On June 3, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for an early end of tenancy and an order of possession for the rental unit.

The matter was scheduled as teleconference hearing. The Landlord's agents ("the Landlord") and the Tenant attended the hearing. The Tenant was assisted by her friend acting as an advocate.

The Landlord and Tenant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant testified that she received a copy of the Landlord's documentary evidence. Both parties affirmed an oath of truth. The parties were informed that recording the hearing is not permitted.

Preliminary and Procedural Matters

The Tenant testified that she sent documentary evidence to the Residential Tenancy Branch and to the Landlord two days before the hearing. She testified that her documents were faxed to a phone number that she was provided. At the time of the hearing the Tenant's documentary evidence was not before me and was not located in the case management system. The Tenant was given an opportunity to provide direct testimony regarding her documentary evidence.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background:

The Landlord and Tenant provided testimony that the tenancy began in March 2016 as a fixed term tenancy and is currently on a month to month basis. Rent in the amount of \$375.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$305.00.

The Landlord provided testimony that the Tenant has breached a term of the tenancy contract because a weapon/ firearm was observed in her apartment.

The Landlord testified that the Tenant also has a history of verbal and physical abuse towards staff. The Landlord testified that there was a very serious incident on September 20, 2020 where the Tenant assaulted a staff member.

The Landlord testified that on June 2, 2021 an occupant reported there was a handgun in the Tenant's rental unit. The police were called and attended the unit. The Landlord stated that the police removed the handgun and also found drugs in the unit that could be related to drug trafficking. The Landlord testified that the Tenant was arrested by police. The Landlord stated that the Tenant presents a safety issue to staff and other occupants of the residential property.

The Landlord testified that the Tenant has been letting people into the residential property that the Landlord has banned from entering the property.

The Landlord wants to end the tenancy and receive an order of possession for the rental unit.

In reply, the Tenant's advocate stated that the police found and removed a toy gun or pellet gun. She stated that the gun is not a firearm and the Tenant was not charged with an offence.

In response to the allegation of assault, the Tenants advocate stated that the incident did not happen.

In response to letting guests into the property, the Tenant's advocate stated that the Landlord does not have cause to ban the Tenant's son from the property and that he was just retrieving his property from the rental unit.

The Tenant testified that the police found a pellet gun in her unit. She stated that police arrested her, and she spent 11 hours in custody before she was released without any charges.

In response to the allegation of assault the Tenant stated that she has never hit/ assaulted anyone in the building. She stated that she has no idea what the Landlord is speaking about and that she was never spoken to or arrested for an assault.

The Tenant referred to a letter that she has provided from another occupant of the property indicating that the Landlords treat the occupants of the property with disrespect.

With respect to the alleged assault, the Landlord was asked whether the Landlord took any action against the Tenant at the time of the very serious assault. The Landlord stated that at the time of the incident, the staff member did not report the incident. The Landlord was asked why they are dealing with the incident now and when they decided to review their video footage. The Landlord could not provide an answer.

The Landlord was asked whether they are banning guests from the residential property and the Landlord replied that they ban people from entering the residential property when they present a risk to the Landlord or other occupants.

The Landlord was asked if they have any evidence to prove that the Tenant was charged with a criminal offence or that the handgun found was a firearm.

The Landlord stated there is no evidence that the Tenant was charged with an offence. The Landlord stated that the police determined it was a real gun and the Landlord has provided a photograph of the gun located on the Tenant's couch.

Analysis

Section 56 of the *Act* states that a Landlord may make an application for dispute resolution to request an order to end 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 granting the Landlord an order of possession in respect of the rental unit. If an order is made under this section, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, the Tenant or a person permitted on the residential property by the Tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property,
- 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
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**,
- 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 find that it is reasonable to accept that a restricted firearm/ handgun being left unsecured within a rental unit presents a serious public safety concern and potentially a criminal offence; however, the Tenant testified that the gun was a toy/ pellet gun and not a firearm. While a toy/ pellet gun may look intimidating, it may not be considered a firearm and may not present a serious public safety concern. The Landlord believes that the police determined that it was a real gun. I accept the Tenant's testimony that she was not charged with an offence.

The Landlord bears the burden of proof, and the Landlord did not provide sufficient proof that the handgun is a restricted firearm or that the Tenant was charged with an offence related to a possession of a firearm or a drug related offence.

With respect to the allegation of an assault in September 2020, I would expect that the Landlord would take immediate action against the Tenant if a very serious physical assault occurred. There is no evidence from the Landlord that the police were ever called about a serious assault. The Landlord could not provide any details as to why the issue is now being raised 9 months later. The Tenant denies the assault occurred.

Once again, the Landlord bears the burden of proof, and I find that the Landlord did not provide sufficient evidence about an assault by the Tenant on a staff member.

With respect to the Tenant allowing people access into the residential property/ building, section 30 of the Act provides that a landlord must not unreasonably restrict access to residential property by:

- the tenant of a rental unit that is part of the residential property, or
- a person permitted on the residential property by that tenant.

While I understand that the Landlord is trying to achieve/ provide a safe a secure environment for occupants; based on the information before me, I find that the Tenant has not breached the Act by allowing her guests into the residential property. The Tenant is ultimately responsible for any actions or poor behavior of guests she has permitted on the property.

Conclusion

The Landlord provided insufficient evidence to support that this tenancy must end pursuant to section 56 of the Act. The Landlord's application 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: July 08, 2021

Residential Tenancy Branch