



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, ET

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 08, 2021 (the “Application”). The Landlord applied for an order ending the tenancy early pursuant to 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 Tenant appeared at the hearing with the Advocate. I explained the hearing process to the parties. 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.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all testimony and submissions 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 and the parties agreed it is accurate. The tenancy started May 28, 2020.

The Landlord testified as follows.

The Tenant has an attitude of “don’t tell me what to do”. For example, the Landlord asked the Tenant not to run the fan in the rental unit continuously and the Tenant does. The Landlord approached the Tenant about the washing machine because it sounded overworked and the Tenant treated the Landlord as if they were a “nobody”. The Tenant would not even talk to the Landlord and the Landlord just walked away. The Landlord put a note on the washing machine and the note was taken off.

The Landlord overheard the Tenant make disparaging remarks about elderly people to another person.

The Landlord had to approach the Tenant about an unreasonable number of videos on demand being ordered on their account and the Tenant said they would leave their security deposit in relation to this. The Tenant has insisted that the Landlord not talk to the Tenant and there is no way for the Landlord to communicate with the Tenant. The Tenant is disrespectful and unkind. The Tenant called the police about the Landlord staring at the Tenant. The police attended and said they have received “petty” complaints about the Landlord from the Tenant.

The Tenant says things that are “totally odd”. For example, the Tenant knows the Landlord used to be a psychiatric nurse and says things like “psychiatric nurse, creepy”. The Tenant has caused the Landlord health problems and the Landlord has been in emergency. The tension between the parties has caused the Landlord’s “whole being to shake” and the Landlord has lost weight. The Landlord has a huge garden and yard and is careful not to go out in it when the Tenant is out there. The Tenant is hurting the Landlord and Landlord’s son. The issues with the Tenant have been going on for almost a year and the Landlord is afraid to be themselves.

The Tenant testified as follows.

The relationship between the Landlord and Tenant was fine at the start of the tenancy. Issues between the Landlord and Tenant began June 01, 2020. The Tenant has not made threats to the Landlord as alleged in the Landlord’s documentary evidence. The

Landlord would leave notes on the Tenant's door and glare at the Tenant when the Tenant was on the property. The Tenant suggested to the Landlord that the rental unit and another unit are illegal suites and are not "up to code" and that the Landlord should stop harassing the Tenant or the Tenant will look into reporting the units.

On June 10th, the Tenant did tell the Landlord "Don't bother intimidating me every time I come on the property" as alleged in the Landlord's documentary evidence.

The Tenant did not tell the Landlord "You are not going to be in charge I am going to set you right" or "I've been taking pictures of you" as alleged in the Landlord's documentary evidence. The Tenant told the Landlord they were past trying to communicate and that it would be up to the RTB to settle the matter between them.

On May 19th, the Landlord came up behind the Tenant and was staring at the Tenant and the Tenant told the Landlord "you really can't control yourself" and that the Landlord needed to stop with the "purposeful stares".

Police have attended the property twice.

It is not true that the Tenant made disparaging remarks about elderly people to someone else as alleged by the Landlord.

The Tenant has never been threatening or intimidating to the Landlord. At most, the Tenant was "sharp" with the Landlord after the Landlord left notes and glared at the Tenant. The Tenant asked the Landlord to leave the Tenant alone. The Tenant tries to avoid the Landlord when coming onto the property.

I have reviewed the documentary evidence submitted. In relation to the Landlord's evidence, I note that I am not able to read some of the handwriting in the statements provided.

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.

I am not satisfied based on the evidence provided that the two-part test outlined above has been met.

I acknowledge that the Landlord and Tenant do not have a good relationship as the parties agreed on this. However, I do not find that the absence of a good relationship between the parties entitles the Landlord to end the tenancy pursuant to section 56 of the *Act*.

In my view, the Landlord must provide sufficient evidence about the Tenant's behaviour to prove that the Tenant has behaved in a manner that meets the first part of the test outlined above and is serious enough to warrant ending the tenancy without notice. Section 56 of the *Act* is reserved for the most serious of circumstances, not for circumstances that should result in the issuance of a one month notice pursuant to section 47 of the *Act*. I have read the Landlord's evidence with particular attention to the evidence about the Tenant's behaviour. I am not satisfied that the examples of the Tenant's behaviour provided are sufficiently serious to meet the two-part test outlined above. I note that the Tenant denied that they have ever threatened or intimidated the Landlord and I am not satisfied based on the evidence provided that the Tenant has. I

acknowledge that the Landlord and Landlord's son have outlined the affect the Tenant's behaviour has had on them and I accept that the stated affects are serious. However, again, it is the Tenant's behaviour that is the focus of the two-part test and I am not satisfied based on the evidence provided that the Tenant's stated behaviour is serious enough to warrant ending the tenancy pursuant to section 56 of the *Act*.

Given the above, I am not satisfied the Landlord has met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Landlord was not successful in the Application, the Landlord is not entitled to reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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: July 26, 2021

Residential Tenancy Branch