



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as the Tenants pose an immediate and severe risk; and to recover the cost of their Application filing fee.

The Landlords, A.S. and P.S., a property manager for the Landlord, M.M. ("Agent"), the Tenants, T.S. and A.S., and their advocate, M.K., ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenants said they had received the Application, Notice of Hearing, and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenants' Advocate said that he had submitted evidence to the RTB and to the Landlords on July 9, 2021. However, I have not received any evidence in the file, and further, the Tenants' evidence would have been served late, if served on July 9, 2021, which is only six days prior to the hearing. Rule 3.15 states that a respondent's evidence must be received by the applicant and the RTB not less than seven days before the hearing. Given these factors, I advised the Parties that I would not be considering the Tenants' evidence, as it is not before me, physically or legally.

At the end of the hearing, the Tenant, A.S., said that she would like to submit evidence. She said she is an Aboriginal First Nations person from Saskatchewan and that she has been "crying endlessly for them; it's bad timing for all in First Nations."

I appreciate the position that A.S. is in. However, I find it odd that she did not raise this when we were talking about the Tenants' evidence submissions at the start of the hearing. Unfortunately, I am limited by the legislation in making my decisions in dispute resolution proceedings. Accordingly, I cannot allow evidence to be submitted after the hearing has finished. However, I have tried to take the Tenant's Aboriginal status into consideration in interpreting the evidence before me.

Preliminary and Procedural Matters

The Landlords provided their email address in the Application and they confirmed it in the hearing. The Advocate provided an email address in the hearing for sending the Decision to the Tenants. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Landlords entitled to an order of possession based on the early termination of the tenancy in accordance with section 56 of the Act?
- Are the Landlords entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on May 15, 2021 and runs to June 1, 2022 and then operates on a month-to-month basis. They agreed that the Tenants pay the Landlords a monthly rent of \$1,400.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$700.00, and no pet damage deposit.

The Landlords submitted a written summary of the situation, as follows:

Within the first week of tenants occupying the suite there was a small fire, causing all smoke detectors in the house to go off. It was contained within the suite and dealt with right away, police have been involved as well. A few weeks later, another fire was set off resulting in the fire department and Fortis BC

arriving at the house, while landlords were away at work. We are concerned about the threat being posed to ourselves and our property. Our tenant seems like the type of person that needs emergency services regularly, and we fear for the safety of our house.

In such a short period of time, there has been threats, police involved several times, and drug trafficking, causing my husband to change jobs urgently and return home immediately. There have been people driving in luxury vehicles, pulling cash out of their wallets, while walking to the suite. In addition to that, people walking in our yard late at night, peeking into windows, and then going into the suite for a few minutes.

She intimidates us by verbally assaulting us, harassing us, saying threats, and racist comments. [T.S.] continues to walk on our property and stands on our front porch confronting us, or waits on our driveway for us to pull out of the garage. A couple weeks after a verbal argument on the phone, she was running around the house with a baseball bat. There have been several instances of noise complaints, in regards to music and yelling from downstairs. She has also violated [local] Bylaws by trying to attract, feed, and disrupt peacocks on our property. Any interaction I have had with her has resulted in me feeling anxious, and unsafe at home. I fear of any confrontation when I am home, resulting in me not leaving the house, or not being able to go outside in our yard or patio. On the other hand, I also fear leaving home, being worried about the safety of our house, and whether it will be burned down.

[reproduced as written]

The Landlords said that they have moved out of the home, because of their concerns. In the hearing, the Landlords said that the reasons that they seeks an early termination of the tenancy and an order of possession are because of the following issues:

- A. Fire risk
- B. Racist Comments
- C. Drug Trafficking
- D. Calling Police
- E. Other
 - i. Attracting/disturbing peacocks, and
 - ii. Smoking.

A. FIRE RISK

The Landlords said that in the first fifteen days of the tenancy, the smoke detector went off twice and that the fire department and the gas company were called for the second incident. The Landlords said that smoke was “billowing out of the window”; however, the Parties also said that they were not there at the time. I found that the Landlords seemed to mix their comments on the two incidents. They said that smoke billowing out of the window is not consistent with the alarm having gone off because of burned toast, which they said was the first incident. However, they implied that the second incident was worse, since the gas company was also called, in addition to the fire department

The Tenants’ Advocate said:

The first time the smoke alarms went off was for burned toast. They claim that the Tenants were setting the place on fire.

The second time – it was an issue with the wiring itself. There was a message that it was carbon monoxide and that everyone should leave the building. They contacted [the Agent], but said that he couldn’t deal with it then, so they called fire department. They said this could be an issue from any floor – it’s not clear that it was the Tenants who caused it.

The Tenant, T.S., said: “The multiple times calling the fire department - you were never home when they were called. If I didn’t call, the house would have been burned to the ground.”

The Tenant, A.S., said: “Regarding the emergency – [T.S.] was calling to protect the house when no one’s home. Yes, everything’s electric, but there’s a gas hot water tank.”

B. RACIST COMMENTS

The Landlord, P.S., said that T.S., makes racist comments that are so inappropriate that the Landlord could not repeat them in the hearing. The Landlords submitted an audio file they labelled “June_2_audio_racist_comments...”. In this recording, you can hear T.S. talking to the Landlords’ Agent about the dryer not having arrived. Some of T.S.’s comments could be interpreted as racist, but I find this is a stretch. However, in other audio recordings, I also heard racist comments from T.S. directed at the Landlords.

The Tenants did not comment on this issue.

C. DRUG TRAFFICKING

The Landlords have accused the Tenants of trafficking drugs from the rental unit, because the Landlords' video recordings show people coming and going from the rental unit for very short periods of time, at various hours of the day and night. One video shows a man pulling his wallet out and possibly taking money from the wallet as he approaches the rental unit.

This is a serious allegation for the Landlords to make, based on circumstantial evidence. However, the Landlords said that their neighbours have also expressed concern to them about the number of visitors attending the rental unit regularly and at varied hours. The Landlords did not direct me to any evidence that they had submitted from the neighbours in this regard.

The Tenant, A.S., said:

What he said about the neighbours – we get along with all the neighbours. The person next door is a single mother with three daughters. They come over to get food and that. You know drug dealing - but it is the same people coming to the house day after day. We're the worst drug dealers, if that's the case.

T.S. said: "Some visitors only stay for a minute. They pick up cheese, ice cream cones; they can come to my fridge and take what they want."

The Landlords said: "Flashing cash isn't someone buying ice cream. The people attending are not children."

I viewed the Landlords' videos of people coming and going from the rental unit, and I did not see the same people coming and going, other than those identified as the Tenant and her daughter.

The Landlords submitted a picture of a police officer's business card; however, they did not submit any police reports or evidence of the Tenants being investigated, let alone charged or convicted of any drug offences.

D. CALLING POLICE

The Landlords said that the Tenants have called the police on them multiple times.

T.S. said:

We tried dealing with [P.S.] many times, but she wouldn't look at us or give us the time of day. I left notes as an olive branch to hit the restart button. I've tried everything. But it was click, click, click, click, click, click,. . . she was doing laps around our bed up there. I called the police to get them to comply with the RTB rules.

The Landlords said:

We're walking in our kitchen, and she yells up, 'take your f'ing shoes off, don't make me call the police'. She called the police multiple times on us. We were making breakfast; we hear her yelling at us. I don't want to repeat what she said. She's trying to intimidate us, and we sit there quietly in our own home. We were just us walking around in our socks.

A.S. said:

They were not walking around in their socks. At 6:00 a.m. she's wearing high heels and walking around. [T.S.] was sleeping. She called the police to get the Landlords to comply with the RTB rules.

E. OTHER

The Landlords referred to other concerns they had about the ongoing tenancy, including the following:

i. Attracting/Disturbing Peacocks

The Landlords said that T.S. tries to attract peacocks to the yard, and that she feeds them. The Landlord said: "We have a video of [T.S.] putting water out for the peacocks." They also said that they have a video of T.S. disturbing the peacocks. This video shows the side of the residential property, which has enough space for a sidewalk between the house and the fence. There was a peacock sitting on top of the fence toward the road, and T.S. standing watching the peacock. There is no volume, therefore, you can't tell if the Tenant is saying anything to the peacock. It appears that she is merely waiting for the peacock to move on, so that she can leave.

The Tenant said that the peacocks were in the back yard when they first viewed the property. The Landlord said there is a park or nature preserve for the peacocks near by. The Tenant added that the Landlords do not clean peacock feces off the railing.

ii. Smoking

When I asked the Landlords if they had given the Tenants any written warnings that the continuation of specified behaviours could lead to their eviction, the Landlords said the following:

We have had conversations with the Tenants. We said you can't continue this behaviour. Listen to our audio upload dated May 23 with [A.S.] I said this behaviour can't continue and it will need to change. It revolves around the smoking issue they've had, and they told me they were non-smokers, but once they moved in, they did start smoking. They lied in the application process. So, we have evidence that they did smoke, and the audio recording is her admitting they did smoke and that they lied on the application. That was final nail. [The Agent] had also had conversations with the Tenants and has explained their behaviour as not acceptable.

The Advocate said: "Re the smoking – it's off the property. Whether they smoke or not is not relevant to the tenancy. There is nothing regarding smoking on the tenancy agreement, either."

The Tenants said:

It doesn't say on the lease that we cannot smoke. But we smoke off the property. I told them that we smoke off the property. It's always out on the street, down the street; yes, we do smoke weed, too, which is legal, just like cigarettes.

The Parties were offered the opportunity to make any last statements before the hearing ended. The Agent said:

Again, it's the frequency of the calling of emergency services; it was not burnt toast. It's the drug trafficking, the body language, the intimidation. The Landlords brought me in as an outside party; I was met with immediate hostility, even as a neutral party.

It is more frequent issues, often, and more intense. Whether there's evidence of hand to hand drug trafficking, even the RCMP has acknowledged it, and the neighbours are fearful. The owners have moved away from the home because of their fears. The neighbours complained that this is a danger. The home is going

to incur damage. They need this tenancy to end immediately for everyone's safety.

This is not a typical tenancy. I do this as profession, and I have never witnessed a tenancy as this one. It is so frequent and so intense. It is borderline scary. I have not had emergency show up four times in this amount of time before.

Her body language – they haven't physically hit anyone, but [the Landlords] are scared, and they left the home because of it.

The Tenants' last statements are merged into the evidence noted above.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In order to establish grounds to end the tenancy early under section 56 of the Act, landlords must (a) establish that they have cause to end the tenancy, **and** (b) that it would be unreasonable or unfair to require the landlords to wait for a notice to end the tenancy under section 47 of the Act to take effect.

A. FIRE RISK

Based on the evidence before me overall, I find that the Tenants may be quick to call emergency services for incidents that happen, such as for a smoking toaster and for shoe noise from upstairs.

However, A.S. did say that the Tenants tried to contact the Landlord's Agent the second time the smoke detector went off - when there might have been carbon monoxide in the residential property. I find it reasonable to have called the fire department in that situation. It is not clear who called the gas company; however, I find that when carbon monoxide is raised as a possibility, the person who called was more likely than not considering the safety of the inhabitants of the residential property. If the gas company did not think it necessary to attend, they did not have to attend. The same can be said for the fire department.

I find in this set of circumstances that the Landlords have not presented sufficient evidence to evict the Tenants for this reason.

B. RACIST COMMENTS

The Tenant, T.S., has stated that she is from an Aboriginal, First Nations community in Saskatchewan. I find that it is common knowledge that First Nations people suffer from racism in Canada; however, T.S. did not accuse the Landlords of being racist. As such, I find it peculiar of T.S. to be making racist slurs to and about the Landlords. I also find this behaviour to be inconsistent with her wish to smooth things over with the Landlords.

The Landlords did not direct me to a section of the Act, Regulation, or Policy Guidelines that authorizes me to evict tenants for making racist remarks. However, I find this is one aspect of the tenancy that causes me concern, as Parties living in the same residential property are better served by behaving more respectfully to one another.

C. DRUG TRAFFICKING

The Landlords submitted evidence of different people coming and going from the rental unit at different times of the day, and each for a short period of time, only. They said the police have attended the rental unit; however, they also said, and the Tenants concurred, that it is the Tenants who called the police on the Landlords.

The Landlords' videos of multiple people attending the rental unit at varied hours for short periods of time raise questions in my mind about what the Tenants were doing. The Tenants attributed these visits to their generosity, sharing cheese and ice cream with people. However, as the Landlords pointed out, the people attending the rental unit for very short periods of time are adults, not children who might visit the Tenants for food treats. Further, I note that these visits occurred over the course of a few weeks of the Tenants having moved into the rental unit, as if this were a pattern that started prior to the Tenants moving in two months ago.

A landlord's burden of proof in this situation is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The Tenants' version of events is inconsistent with common sense and ordinary human experience. I find that they did not provide a believable explanation for their frequent, short-term visitors. However, while the Landlords do not need evidence of a criminal conviction for these activities, the Landlords did not provide a police report or evidence that the Tenants had been investigated by the police for these activities. I find that providing a copy of a police business card is not persuasive evidence of a criminal investigation.

As a result, I find that I do not have sufficient evidence in this regard to end the tenancy,

pursuant to section 56 of the Act. However, it causes concern and suspicion about what the Tenants might be doing.

D. CALLING POLICE

Based on the evidence before me, I find that the Tenants have called the police, because they thought the Landlords were being too loud in wearing shoes on the floor above the Tenants' bedroom in the early morning. The Tenants said they called the police to make the Landlords comply with the Act. However, the Tenants did not provide evidence that they had first gone up to ask the Landlords to be quieter, because they woke the Tenant up early in the morning. If the Landlords failed to comply with such a request, then the next step would be to contact the RTB and apply for dispute resolution. An applicant can apply for an order of quiet enjoyment of the rental unit. These are actions that should have been taken prior to calling the police over noisy footsteps upstairs.

I find that it is more likely than not that the Tenants call the emergency services too easily, before trying to first resolve the situation with diplomacy and courtesy. However, I find that on its own, calling the police is not grounds for an early eviction and an end to the tenancy pursuant to section 56; however, combined with other issues before me, it raises questions in my mind about the pragmatism of continuing this tenancy.

E. OTHER

i. Attracting/Disturbing Peacocks

The Parties agreed that there are peacocks in the neighbourhood, and that they wander onto the residential property from time to time. However, the Parties are at odds as to their respective roles in this matter. The Landlords accuse T.S. of encouraging the peacocks to visit by leaving a bowl of water out. They also accused her of disturbing the peacocks, although I find there is insufficient evidence of the latter claim to comment on further.

There is no evidence before me that the Landlords communicated their concerns about the peacocks to the Tenants. If the Landlords do not like to have peacocks in the yard, then they should politely ask the Tenant to please stop leaving them food and water.

I find that the Landlords have provided insufficient evidence to establish this as a reasonable ground to evict the Tenants pursuant to section 56.

ii. Smoking

The Landlords appear to be offended that the Tenants claimed to be non-smokers on the tenancy application form, despite being smokers. However, there is no evidence before me that the Tenants smoke on the property. Rather, the Landlords acknowledged that they go to the end of the driveway or down the street to smoke.

Further, the Landlords have not directed me to a section of the tenancy agreement that prohibits smoking on the premises. Regardless, I find that the Tenants have not smoked on the premises. Even if the tenancy agreement prohibited the Tenants from smoking on the premises, this does not prohibit them from smoking tobacco or cannabis altogether. I find that the Landlords have not provided sufficient evidence to use this claim as a ground for ending the tenancy pursuant to section 56 of the Act.

Summary

This tenancy started on May 15, 2021. It had been running for exactly two months by the time of the hearing. I find it unusual that such a short tenancy would produce so many issues of disagreement between the Parties. I have found the following on each issue:

Fire Risk:

-insufficient evidence to evict the tenants under section 56.

Racist Comments:

-insufficient evidence for eviction under section 56; however, the disrespect that accompanies racist comments are detrimental to the health of the tenancy.

Drug Trafficking:

-cause for concern and suspicion, but insufficient evidence to evict the Tenants on this basis.

Calling Police:

-not against the law; however, a tenant who wants a tenancy to work might not want to call the police on the landlord for minor irritations that have not yet been explained courteously to the landlord.

Other:

Peacocks – not a ground under section 56 of the Act to end the tenancy.

Smoking – the Tenants do not smoke on the residential property; a landlord cannot prohibit a tenant from smoking off of the residential property.

I find that there is insufficient evidence before me to end the tenancy early, pursuant to section 56 of the Act, based on the claims before me at this time. However, I find that the Parties need to develop more tolerance of each other's differences, as well as accepting that people sharing a residential property will hear each other from time to time, whether this be footsteps, music or other ordinary sounds. The following comments are meant to encourage a congenial relationship for the tenancy in this residential property; these comments are based on the Parties' evidence before me, as well as common sense and ordinary human experience.

Calling a person racist or otherwise offensive names is not a means of ensuring a peaceful, reasonable living arrangement in a rental property. Wearing shoes with hard soles on hard floors in the early mornings is not a means of ensuring a peaceful, reasonable living arrangement in a rental property. Lowering the bass in music in a residential property is courteous to others who might not share your taste in music. However, calling the police when your neighbour is being noisy is unreasonable. Calling the fire department over burned toast is unreasonable. Calling emergency services when they are needed for their intended purpose is reasonable.

A person knows when he or she is being aggressive and possibly intimidating to others. Such behaviour does not contribute to a peaceful, reasonable living arrangement.

There may be insufficient evidence before me to end the tenancy pursuant to section 56 of the Act; however, if these issues continue, it is possible that the tenancy could end pursuant to section 47 of the Act, with the issuance of a One Month Notice to End Tenancy for Cause. Accordingly, **I caution the Tenants** to monitor their behaviour. If their visitors continue to attend the rental unit for such short visits at odd hours, it raises questions about the legality of the Tenants' activities. Accordingly, the Tenants are strongly encouraged to end this behaviour for the good of the tenancy. Further, the Tenants are encouraged to inform the Landlords in a courteous way, if the Landlords' behaviour bothers the Tenants, rather than calling the police first.

Based on the evidence before me overall, and pursuant to section 56 (2) (b) of the Act, I do not find that it would be unreasonable or unfair to the Landlords to wait for a notice to

end tenancy under section 47 to take effect. Accordingly, I dismiss the Landlords' Application wholly without leave to reapply. Given their lack of success in this Application, I decline to award the Landlords recovery of the \$100.00 Application filing fee.

The tenancy continues until ended in accordance with the Act, and I wish the Parties the best going forward.

Conclusion

The Landlords' Application is unsuccessful, as they provided insufficient evidence to end the tenancy pursuant to section 56 of the Act. The tenancy will continue until ended in accordance with the Act.

Given their lack of success in this Application, I decline to award the Landlords with recovery of their \$100.00 Application filing fee.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 19, 2021

Residential Tenancy Branch