



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 on July 20, 2021, wherein the Landlords requested an early end to tenancy as well as recovery of the filing fee.

The hearing of the Landlords' Application was scheduled for teleconference at 9:30 a.m. on August 27, 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 parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of 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.

Issue(s) 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

The Landlord's son, P.D., testified as follows. He confirmed that the tenancy began October of 2020. The Tenants rent the upper unit in a two-level house.

P.D. stated that the circumstances giving rise to the Landlords' request for an end of this tenancy relate to the Landlords' concerns regarding the Tenants' pit-bull dog. He stated that the neighbour is afraid to walk her dogs because of the Tenant's pit-bull. He confirmed that the pit-bull is always caged up and has a muzzle, however he claimed that it has attacked the other Tenant, M.G. P.D. also stated that to his knowledge the S.P.C.A. has had a few complaints about the dog. P.D. further testified that the Caretaker, E.L., lives in an RV in the backyard of the rental property and was also attacked by the dog. P.D. further stated that the Tenant also "sicked the dog on a cat" and in support directed my attention to a text message from the neighbour who wrote that they saw the dog act aggressively towards the cat.

In terms of the urgency of the Landlord's request, P.D. claimed that the last time the dog was aggressive towards people or other animals was two months prior to the hearing on June 21, 2021; he did not provide any further details regarding this alleged incident. He further confirmed that nothing has happened for the past two months, save and except for constant barking.

The caretaker, E.L., also testified. He stated that he resides in an R.V. on the property on occasion and has looked after the property for the Landlords. E.L. claimed that the Tenants' dog is very vicious and tried to attack him when they first moved in, approximately a year ago, at the end of September 2020. He stated that he was checking his mail and the dog came out the door and "damn near bit [him]". He also stated that approximately November 2020, he was putting a new lock on the back door, and even though the dog had a muzzle on, the dog bit him through the muzzle and broke the skin. E.L. stated that he called animal control and was reluctant to do anything because he felt bad for the dog; it was his understanding that there were enough complaints on the dog that it would be put down and in his heart he didn't want to do that.

E.L. confirmed that he believes that the Tenant can now keep the dog under control, but he finds her very inconsiderate and argumentative and as a result he tries to avoid her.

E.L. also stated that the Tenant also refuses to give him his mail. He stated that she has restricted his access to water and electricity to his R.V.

The Tenant, A.P., responded to the Landlord's claim as follows. She confirmed that she has two dogs, a father and son. She stated that one of the dogs is very young and when he says "hello" he jumps up and tries to lick peoples' faces. She further stated that she puts a muzzle on her dog for his safety but only puts it on him when he is out for walks and never at home. She denied that he has been deemed a dangerous dog, but noted that he is under two years old, is big (over 100 pounds) and overly friendly which can be frightening for some people. She agreed that animal control attended the scene when E.L. complained but stated it was a false complaint. She also noted that she has made an FOI request from Animal Control but has yet to receive any information.

The Tenant stated that she has not received any complaints about her dog being vicious since 2020, aside from E.L.'s complaint that her dog has been aggressive to his cat. She stated that E.L.'s cat sits on the fence and swats at the dogs which in turn cause them to react. She also denied receiving any formal warning letters from the Landlords about her dogs, save and except for the materials filed by the Landlord in support of the Landlord's application.

In terms of E.L.'s complaints about the water and electricity, A.P. stated that she believed it was unconscionable for a Landlord to force her to pay for the water and electricity and then provide it for free to E.L.'s R.V. She also stated that it was in fact the Landlord's son, P.D., who cut off the water and hydro to E.L.'s RV.

The Tenant M.G. also testified. He stated that contrary to P.D.'s testimony, he has not been attacked by the dogs and he never had such a conversation with P.D. M.G. also confirmed that the dog has not been deemed a dangerous dog and wears a muzzle when it goes on walks for its own safety, not because it is dangerous. M.G. stated that they do so because he is a big dog and people are easily upset by big dogs. He also noted that they are quick to put dogs down for no reason, and they are concerned about this dog as it is a "friendly giant".

M.G. confirmed that to his knowledge E.L.'s complaint was deemed unsubstantiated by Animal Control and that there was nothing outstanding against the dog.

M.G. also stated that he has not received any formal warnings from the Landlords.

In reply, P.D., testified that the “main incidents” of concern were in 2020. He clarified that the most recent complaints are from the neighbour who said that the dogs bark constantly and she can’t sleep and have tried to attack her dogs.

P.D. also confirmed that the most urgent issue is not the Tenants’ dogs, but that the Tenant has cut off the water and electricity to E.L.’s R.V. He stated that the utilities were originally in his name but then changed to her name for the “past 2-3 months”.

Analysis

A tenancy may be ended early pursuant to section 56 of the *Act*, which provides 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 landlord must prove both parts.

In this case, the Landlord initially claimed the most urgent matter was the Tenants' dog who he deemed dangerous. As the hearing progressed, the Landlords conceded that the issues with the dog related to approximately a year ago, and that the only current issues related to barking. I find these historical concerns to be irrelevant to the issue before me based on the Landlords' testimony, as well as the caretaker, E.L.'s confirmation that he believes the Tenants are able to keep their dog under control.

The Landlord and E.L. both testified that the most urgent issue was the Tenant cutting off water and electricity to E.L.'s R.V. The evidence before me is that E.L. resides in an R.V. on the property on occasion. He uses the water and electricity which is in the Tenants' names.

As discussed during the hearing, and as aptly noted by the Tenant, A.P., it is unconscionable for a landlord to expect a tenant to have utilities in their personal name if those utilities are shared by multiple tenants. It is the Landlords' responsibility to have those utilities in their name and apportion financial responsibility between more than one tenant. While it is unfortunate the Tenants have conflict with the caretaker E.L., it is likely that conflict would be reduced if the Landlords honoured their obligation to provide utilities to all tenants.

I am not satisfied, based on the evidence before me that the Landlords have cause to end this tenancy, nor am I satisfied that it would be unreasonable or unfair for the Landlords to wait for a 1 Month Notice to End Tenancy for Cause to take effect. As such, I find the Landlords have failed to meet the test set forth in section 56 of the *Act*. Consequently, the Landlords' application is dismissed.

As the Landlords' application was unsuccessful, they are not entitled to recovery of his filing fee for the cost of his application.

Conclusion

The Landlords' application is dismissed, with the effect that the tenancy continues until ended in accordance with the *Act*. The Landlords' request for recovery of the filing fee is similarly 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: September 1, 2021

Residential Tenancy Branch