



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 Landlord's Application for Dispute Resolution, filed on September 19, 2021, in which the Landlord sought an early end to tenancy as well as recovery of the filing fee.

The hearing of the Landlord's Application was conducted by teleconference at 9:30 a.m. on October 22, 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 Tenant also called his roommate, M.S., as a witness.

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.

Preliminary Matter—Tenant's Name

Hearings before the Residential Tenancy Branch are conducted in accordance with the

Residential Tenancy Branch Rules of Procedure. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

At the outset of the hearing the Tenant confirmed the spelling of his last name and noted that the Landlord had misspelled his name on the Application. A review of the tenancy agreement provided in evidence confirmed the Tenant's spelling.

I therefore amend the Landlord's Application for Dispute Resolution to accurately spell the Tenant's name.

Issues to be Decided

1. Is the Landlord entitled to an early end to tenancy?
2. Should the Landlord recover the filing fee?

Background and Evidence

In support of her Application, the Landlord testified as follows. She confirmed that this tenancy began March 1, 2021; monthly rent is \$750.00; and, the Tenant paid a \$375.00 security deposit. She stated that the Tenant rents a room in shared accommodation with two other tenants/roommates. The Landlord does not reside in the rental property although she used the rental unit address as her address on her Application.

The Landlord issued a 1 Month Notice to End Tenancy for Cause on August 27, 2021. On September 10, 2021, the Tenant applied to dispute the Notice; a review of Residential Tenancy Branch ("Branch") records confirms that a hearing of his Application is scheduled for January 25, 2022.

The Landlord filed the within Application on September 19, 2021. The reasons giving rise to the Landlord's request to end this tenancy early were set out on her Application as follows.

"Tenant sends harassing's messages and over 35 texts, there was police call from me the 57 old landlord for pushing me, bullying me, I had to go to police to ask tenant to stop texting abusive statements. Tenant had locked room preventing inspection of rental

property even with 2 4hrs notice, tenant had sent messages like " You will see consequences" You have illusion" and have started to argue with other roommates for gym fob. Landlord had to go to with police officers to "Keep the peace" ""

During the hearing the Landlord testified that every time she goes to the rental property, she is fearful because the Tenant bullies, shouts at her, and raised his hand to her. She described him as very angry and stated that it has escalated such that he pushed her on September 1, 2021. She claimed that she does not want to attend the rental property on her own and now goes with her daughter. She stated that she called the police when he pushed her on September 1, 2021, and the police told her to go to the tenancy board rather than constantly calling the police.

The Landlord also testified that the Tenant sent her 25 messages because he had problems with his roommate regarding the access to the recreational facility. She described these messages as harassing. She also claimed the roommate moved out because of the Tenant.

The Landlord further testified that the Tenant also changed the lock on his door.

The Landlord also stated that the Tenant threatened her by text on August 27, 2021 "you will see consequences". A copy of this email was provided in evidence before me. The Landlord also claimed the Tenant said "I will create problems for you" which she found to be threatening.

The Landlord noted that she has health issues which are exacerbated by the stress caused by the Tenant.

The Landlord provided written submissions wherein she reiterated the above. She also wrote that she was unable to insure the rental unit with three roommates as she is only permitted to rent to a single family. She indicates that she served a 1 Month Notice to End Tenancy for Cause at that time and that the other roommates were prepared to move out, but the subject Tenant disputed the Notice. Also provided in evidence by the Landlord was an email dated August 31, 2021 from the Landlord's insurer confirming the unit may only be rented to a family.

Email communication between the Tenant and the Landlord suggests the Tenant and the other roommates had difficulty accessing the recreation facilities at the rental property because the unit was not to be rented to three separate individuals but to a

family. The majority of the text and email communication between the Tenant and the Landlord appear to deal with this issue.

In response to the Landlord's testimony the Tenant stated that he did not raise his voice to her, did not swear at her, did not raise his hand to her, and did not shove her. The Tenant stated that on September 2, 2021 the Landlord came to the rental unit at 12:15 a.m. looking for the other roommate as he was not responding to her texts; he stated that he was very surprised as she arrived after midnight without any notice to the Tenants. He asked her to go outside at which time she insulted the Tenant and refused to leave. The Tenant claimed that he called the police, following which the Landlord left before the police came.

In terms of the Landlord's claims that he told her that she will see "consequences", he testified that he meant that she would see consequences at the Residential Tenancy Branch as he filed for dispute resolution to dispute the Notice. He stated that from the very beginning the Landlord has been alleging he harasses her yet all he is trying to do is assert his rights as a tenant.

The Tenant also stated that the other roommate did not move out because of him, she moved back to her home country.

The Tenant's roommate, M.S., also testified. He confirmed that he has lived at the rental property approximately 8 months. He further confirmed he gets along well with the Tenant. He stated that the Landlord is a good owner. He stated that the Tenant and the Landlord used to get along and that he doesn't see any problems, and thinks it is unfair that the Tenant is being asked to move out. He confirmed he was not present on September 2, 2021.

In reply the Landlord stated that the Tenant's testimony was not true. She also denied going to the rental property at 12:15 a.m. on September 2, 2021; rather she stated that she went to the rental property on September 1, 2021 at 7:30 p.m. to serve a 10 Day Notice to End Tenancy. She stated that she was also trying to resolve an issue between the Tenant and his roommate, as they were fighting over the fob and access to the recreational facilities.

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 alleged the Tenant yells and bullies her, and that this has escalated to the point that the Tenant has physically pushed her. The Tenant vehemently denied the Landlord's allegations. He testified that on the night in question, September 2, 2021, the Landlord attended the rental unit after midnight, without notice to the tenants, and that he asked her to leave and called the police.

The Tenant called one of his roommates as a witness; the witness stated that the Tenant and the Landlord used to get along, and thought it was unfair that the Tenant's tenancy was in jeopardy. He stated that he didn't see any problems, although he noted that he was not present when the Landlord attended on September 2, 2021.

The evidence from both sides shows that this has become a problematic tenancy. However, I find that the Landlord has only provided allegations of the Tenant's misconduct, most of which were unsupported by reliable evidence and which were disputed by the Tenant. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As noted, the Landlord included evidence which suggests the Landlord wishes to end this tenancy as the current configuration of three roommates in the rental unit is contrary to the strata bylaws (which in turn has created issues with respect to the tenant's access to the recreational facilities) and is impacting her ability to insure the property. She confirmed the other tenants agreed to move out on a mutual agreement, however the subject Tenant refused. On balance, I find it more likely the Landlord wishes to end

this tenancy for those reasons, rather than any safety concerns she has about the Tenant.

The Landlord characterized the Tenant's text and email messages as harassing. I have reviewed those messages and do not share her view of those messages. I accept the Tenant's testimony that he wrote she would "see consequences" as it related to his Application to dispute the Notice to End Tenancy, not that he was threatening her physical harm.

In this case, the Landlord bears the burden of proof and I find that the Landlord has not provided sufficient, clear evidence to establish adequate cause to end the tenancy under section 56. Consequently, the Landlord's application is dismissed.

I also note that even in the event I had found the Landlord had cause to end this tenancy I would not have ended it pursuant to section 56 as I am not satisfied it would be unreasonable or unfair for the Landlord to wait until the hearing of the Tenant's Application to dispute the Notice which is currently scheduled for January 25, 2022.

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

Conclusion

The Landlord's application is dismissed, with the effect that the tenancy continues 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: November 1, 2021

Residential Tenancy Branch