



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The Landlord applies for the early termination of a tenancy pursuant to s. 56 of the *Residential Tenancy Act* (the “*Act*”) and for return of their filing fee.

B.S., property manager, and J.T., resident property manager, appeared as agents for the Landlord. A.O. appeared on her own behalf as the Tenant. A.O. appeared as assistant to the Tenant and provided no evidence.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord advised having served the Tenant with the Notice of Dispute Resolution and their initial evidence by posting it to the Tenant’s door on October 13, 2021. The Tenant acknowledges receipt of the Notice of Dispute Resolution and the initial evidence. I find that the Landlord served the Notice of Dispute Resolution and the initial evidence in accordance with s. 89 of the *Act* on October 13, 2021.

Preliminary Issue – Later Evidence from Landlord

The Landlord submitted evidence to the Residential Tenancy Branch on October 15, 2021, two days after the initial evidence was served on the Tenant. When asked if this had been served on the Tenant, the Landlord advised that it had not on the basis that they did not want to divulge the identity of the individual occupants of the residential property who authored the documents. I advised the Landlord at the hearing that the

evidence would be excluded on the basis that the evidence had not been served on the Tenant as contemplated by Rule 10.3 of the Rules of Procedure.

Issue(s) to be Decided

- 1) Whether the tenancy will end without notice pursuant to s. 56 of the *Act*?
- 2) Is the Landlord entitled to their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed that the tenancy began on January 1, 2021. The Tenant pays \$4,150.00 in rent, which is due on the first day of each month. The Landlord confirmed holding a security deposit of \$2,075.00 and a pet damage deposit of \$2,075.00 in trust for the Tenant. A written copy of the tenancy agreement was provided by the Landlord.

The Landlord advised of a series of incidents that began in late August 2021. The residential property is a multi-unit building with shared gym facilities. The property has a set of shared facility rules that regulate the use of spaces shared by the tenants at the residential property.

The Landlord indicates that in September 2021 they had received several complaints regarding the Tenant's use of a Bluetooth speaker while she used the building's gym facilities. The Landlord indicates that use of speakers is prohibited by the shared facility rules, in particular clause 8 on the use of the gym's facilities. It appears these initial complaints resulted in no formal actions by the Landlord.

On October 1, 2021, the Tenant, while using the gym, was playing music on her Bluetooth speaker which resulted in a conflict between her and another tenant. The Landlord indicates that the music on that occasion was sufficiently loud to be heard by the occupants in the floor above the gym.

The Landlord advised that the argument involved the Tenant yelling and directing vulgar language to the other tenant. The other tenant did not appear as a witness. A text message from the other tenant, provided by the Landlord, indicates that the music was

so loud that she could hear it through the music in her headphones. In the other tenant's telling, she asked the Tenant to turn the music down. The other tenant's text says that she was "barraged" with racists and abusive language. The text message indicates the Tenant gave her the middle-finger and stuck her tongue out to her. J.T., the resident property manager, attended on October 1, 2021 and assisted in ending the confrontation between the Tenant and the other tenant.

The Tenant does not deny using her Bluetooth speaker while using the gym but emphasized that she would always ask the other gym users who were present. She claims that other occupants also use Bluetooth speakers while using the gym. On October 1, 2021, the Tenant says that the other tenant had agreed to her playing music in the gym and had asked her to turn it down when the other tenant wished to make an Instagram video. The Tenant does not deny arguing with the other tenant but indicates that this was in response to the other tenant's yelling at her. She claims the other tenant is racist.

Following the incident of October 1, 2021, the Landlord reached an accord with the Tenant and the other tenant such that they each had specified times to be at the gym. The Landlord indicates the Tenant apologized for her conduct on October 1, 2021.

The Landlord indicates that they received a complaint on October 4, 2021 that the Tenant had used the gym during the hours it was available to the other tenant. In the Landlord's telling, the Tenant showed up to the gym at 10:08 AM, which was after the other tenant showed up for the beginning of their scheduled time at 10:00 AM. The Tenant denies the timeline provided by the Landlord and indicates she showed up at the gym at 9:40, the other tenant showed up early, and the Tenant left at 9:58 AM.

Following the subsequent complaint from the other tenant, the Landlord issued a formal letter to the Tenant on October 5, 2021 advising her of the rules for the shared facilities and suspended her use of the gym until November 1, 2021.

The letter also mentions complaints regarding the smell of cat urine coming from the Tenant's rental unit. The Landlord indicated having accessed the rental unit after the Tenant allowed access to inspect for the smell. The Landlord further indicated having accessed all the rental units on the floor to determine the source of the smell. The Landlord submits that the smell was coming from soiled urine pads near the entrance to the Tenant's rental unit. The Landlord further submits that another tenant is looking to end their tenancy early due to the smell.

The Tenant denies this and indicates that she cleans her unit every Wednesday and Friday and the smell of urine came from a dog that had relieved itself on the carpet in the hallway.

The letter of October 5, 2021 states the following at the end:

You are hereby put on notice that if you continue to disturb the quiet enjoyment of others, you will be given a one month's *Notice of Termination* to vacate the premises. **Also, if we consider that someone's health and safety is directly threatened by your actions, we will use the 48-hour emergency eviction procedure.** Please consider this as a **final warning**.

The Landlord provides copies of the email exchange between the parties after the letter of October 5, 2021 was received by the Tenant. In the email exchange, the parties argue about the events that took place on October 1, 2021 as well as the revoking of the Tenant's access to the gym. The exchange includes the following email from the Tenant on October 7, 2021:

This is actually funny. Do you know what human rights are? And yes, I do have the money to fight you. Fuck this disrespect.

Reinstate my gym membership please. I won't ask nicely again.

The Landlord indicates receiving another complaint from the other tenant on October 8, 2021 in which it is alleged the Tenant filmed the other tenant and called her a "cunt". After hearing this complaint, the Landlord initiated the present application for ending the tenancy without notice. The Landlord further indicates that on October 26, 2021 they received word that the other tenant ran into the Tenant at the building. The Tenant is alleged to have been drunk and yelled at the other tenant. The other tenant is claimed to be afraid of the Tenant.

The Tenant denies the incidents of October 8, 2021 and October 26, 2021 took place at all and argued that they are fabrications by the other tenant. The Tenant claims that she is being targeted by the other tenant and that the Landlord is not respecting the Tenant's perspective in the present dispute.

The Tenant did not submit any documentary evidence in response to the Landlord's application.

Analysis

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between these sections of the act is that under s. 56 no notice is given to end the tenancy on the basis that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline 51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

I accept that there is a significant interpersonal conflict between the Tenant and the other tenant with respect to use of the shared gym facilities. I find that the cause of the dispute, being the playing of music within the gym, is juvenile. There are claims of racism present by the Tenant. These are bare allegations and lack sufficient evidence to be made out by the Tenant.

Having said that, this is the Landlord's application, and they bear the onus of showing that the disturbances are sufficiently serious to justify ending a tenancy without issuing a notice to end tenancy. I find that the Landlord has failed to do so under the circumstances.

In the Landlord's submissions, the triggering event appears to have been the alleged incident that took place on October 8, 2021 where the Tenant is said to have video taped the other tenant and called her a "cunt". The Tenant denies this incident took place. I place significant weight on the fact that the other tenant, who appears to be central in this dispute, was not called as a witness. I am unable to make findings on whether the event did, in fact, take place. For the same reason, I put no weight on the alleged events of October 26, 2021.

Even if I were to accept the events of October 8, 2021 took place as described by the Landlord, I would not find them sufficiently serious to justify ending a tenancy without a notice to end tenancy. Policy Guideline #51 is clear that the breaches need to be serious where there is a clear risk to personal safety and property. Calling someone a "cunt", though offensive and unpleasant, does not rise to the level to justify ending a tenancy pursuant to s. 56.

The most concerning aspect is the veiled threat in the Tenant's email of October 7, 2021 where she states, "I won't ask nicely again." This type of behaviour is entirely unacceptable and may very well give rise to ending a tenancy for cause. However, the Landlord has failed to demonstrate that it would be unreasonable or unfair to wait for a One-Month Notice to End Tenancy for cause to take effect. The Landlord has provided no evidence of violence and the language of the email, though concerning, could just as easily be an empty puff. Given the uncertainty, I refuse to end the tenancy under s. 56.

The final aspect, being the smell of cat urine, does not give rise to sufficiently serious circumstances to end a tenancy without notice. Accepting that there is a dispute whether the Tenant is the cause of the smell, I find that, even if it were the Tenant, there is no allegation that the Tenant's cat is damaging property by urinating on it. Rather, the Landlord says a urine pad is soiled and the smell may impregnate itself within the rental unit. Their argument is speculative and lacks sufficient evidence. Without evidence of direct property damage, I am unwilling to end the tenancy under s. 56.

I find that the Landlord has failed to demonstrate that it would be unreasonable or unfair to wait for a one-month notice to take effect. Accordingly, their application is dismissed.

Conclusion

The Landlord's application to end the tenancy pursuant to s. 56 is dismissed without leave to reapply. The tenancy shall continue until it is ended in accordance with the *Act*.

As the Landlord was unsuccessful, they are not entitled to the return of their filing fee.

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