Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with an expedited Application for Dispute Resolution (the Application) that was filed by the Landlord on January 3, 2022, under the *Residential Tenancy Act* (the *Act*), seeking:

- An early end to the tenancy pursuant to section 56 of the *Act*; and
- Recovery of the $100.00 filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on February 17, 2022, and was attended by the Landlord and their support person/agent I.D., both of whom provided affirmed testimony. Neither the Tenants nor an agent for the Tenants attended. The Landlord and their agent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondents must be served with a copy of the Application and Notice of Hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Landlord and agent testified that the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package for the Expedited Hearing, including a copy of the Application and the Notice of Hearing, were personally served on the Tenant M.B. on January 19, 2022, by the Landlord, in the presence of I.D. A Proof of Service Notice of Expedited Hearing Dispute Resolution Proceeding (#RTB-9) form was submitted in support of the above testimony. The form contained a witness signature and statement from I.D. as well as a signature appearing to be from the Tenant M.B.

confirming personal service on January 19, 2022. Residential Tenancy Branch records indicate that the Notice of Dispute Resolution Proceeding Package was made available to the Landlord on January 18, 2022. As a result, I find that the Tenants were personally served in accordance with sections 59(3) and 89(2)(a) of the *Act* and rule 10.3 of the Rules of Procedure, on January 19, 2022.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing information contained in the Notice of Hearing was correct, and I note that the Landlord and their agent had no difficulty attending the hearing on time using this information. As the Landlord, their agent, and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled pursuant to rule 7.3 of the Rules of Procedure, despite the absence of the Tenants or an agent acting on their behalf. Although the teleconference remained open for the 40 minute duration of the hearing, neither the Tenants nor an agent acting on their behalf called into the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord and their agent, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Preliminary Matters

Based on the affirmed and uncontested testimony of the Landlord and agent at the hearing, I am satisfied that the documentary evidence before me from the Landlord was personally served on the Tenants on January 19, 2022.

Rule 10.2 of the Rules of Procedure states that an applicant must submit all evidence that the applicant intends to rely on at the expedited hearing with the Application for Dispute Resolution. Residential Tenancy Branch records indicate that the Application for an expedited hearing was filed on January 3, 2022. Although 10 pages of documentary evidence was submitted at that time, which I accept for consideration as I am satisfied that hey were served on the Tenants as set out above, 15 pages of

additional documentary evidence was submitted to the Residential Tenancy Branch on January 17, 2022.

When I asked the Landlord and the agent why this documentary evidence was not submitted at the time the Application was filed as required, they stated that they initially believed that their statements and write-ups would be sufficient, and only later realized that might not be enough, so the additional evidence (14 photographs with annotations and a 1 page written statement) was obtained and submitted.

Based on the above, I am not satisfied that the additional evidence submitted on January 17, 2022, constitutes new and relevant evidence as set out under rules 3.17 and 10.6 of the Rules of Procedure. As a result, I have excluded it from consideration.

Issue(s) to be Decided

Is the Landlord entitled to end the tenancy early pursuant to section 56 of the *Act*?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord and agent stated that when the Tenants accidentally called 911 on July 31, 2021, the RCMP attended and subsequently advised them that the manner in which the rental unit was kept by the Tenants is a safety hazard, as they might not be able to evacuate safely in the event of an emergency. The Landlord and agent stated that the Tenants are hoarders and that they have a significant number of possessions in the rental unit. The Landlord and agent also stated that the RCMP advised them that the Tenants are storing cardboard boxes in the furnace room, which is a fire risk. When I asked the Landlord if they had documentary evidence from the RCMP to support that there was a fire safety risk, they stated that they did not.

The Landlord and agent stated that in addition to the above, there is an odour coming from the rental unit, that there is mould in the kitchen, and that on one occasion it took the Landlord 24 hours to gain access to the water shut off valve, which is located in the rental unit, due to the excessive number of possessions in the rental unit, which delayed the Landlord’s replacement of a faucet in the upper portion of the home where they reside.

The Landlord and agent argued that if something serious were to occur, such as a fire, the Tenants may not be able to exist the rental unit safely, and that in general, this presents a significant risk to the Landlord and their spouse, who also reside above the rental unit, as well as the rental unit.

The Landlord submitted copies of five letters sent to the Tenants and a copy of a One Month Notice to End Tenancy for Cause (the One Month Notice) for my review and consideration.

Although the hearing remained open for 40 minutes, no one appeared on behalf of the Tenants to provide any evidence or testimony for my consideration.

Analysis

Section 56 of the *Act* states that a tenancy may be ended early by a landlord without the need to serve a notice to end tenancy on the tenant if an arbitrator is satisfied that the tenant or a person permitted on the residential property by the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- 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;
- engaged in illegal activity that 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;
- engaged in illegal activity that 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.

Section 56 of the *Act* also requires that the arbitrator be satisfied that 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.

Although section 56 of the *Act* allows Landlords to end a tenancy without the need to serve a notice to end tenancy under section 47 of the *Act*, in certain circumstances and where it would be unreasonable, or unfair to the landlord or other occupants of the property to wait for a One Month Notice to End Tenancy for Cause to be served and take effect under section 47 of the *Act*, section 56 of the *Act* is not intended to expedite matters of possession for a Landlord who could reasonably have served and enforced a One Month Notice. The Landlord submitted a copy of a One Month Notice signed and dated November 30, 2021, with an effective date of December 31, 2021, which lists the same reasons for ending the tenancy as those given by the Landlord and agent at the hearing. Further to this, a letter dated August 3, 2021, was submitted for my consideration in relation to the July 31, 2021, 911 call, advising the Tenants that the state of the rental unit is unacceptable. Despite the above, the Landlord did not seek to enforce the above noted One Month Notice and did not file this Application seeking an early end to the tenancy under section 56 of the *Act* until January 3, 2022. As this date is more than 5 months after the Landlord first became aware of the issue for which they are seeking to end the tenancy, and after the effective date for the One Month Notice had passed, I am not satisfied that the Landlord considered the matter significant and urgent, or that it would be unreasonable or unfair for the Landlord to wait for enforcement of their One Month Notice, which was previously served in relation to this same issue.

I am also not satisfied that the number of possessions in the rental unit or the manner in which they are stored constitutes grounds to end the tenancy under section 56 of the *Act*. Although the Landlord and the agent argued that the hoarding is a fire safety risk, there is no documentary or other evidence before me that satisfies me that the number of possessions in the rental unit or the manner in which they are stored, presents any significant risk of fire. At the hearing the Landlord and the agent focused heavily on the fact that *if* there were an emergency, the way in which the rental unit is kept *could* present a risk to the Tenants in terms of evacuation. I find this argument highly speculative, and I am not satisfied that a hypothetical risk to the Tenants in the event of a hypothetical emergency that I am not even satisfied there is any immediate or significant risk of, constitutes grounds for ending the tenancy under section 56 of the *Act*.

Based on the above, I therefore dismiss the Application, including the Landlord's request for recovery of the $100.00 filing fee, without leave to reapply.

Conclusion

The Landlord's Application seeking an early end to the tenancy under section 56 of the *Act* and recovery of the filing fee is dismissed without leave to reapply. I therefore order that the tenancy continue in full force and effect until it is ended by the parties in accordance with the *Act*.

The Landlord remains at liberty to seek enforcement of the One Month Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch for this purpose, should they wish to do so.

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: February 17, 2022

Residential Tenancy Branch