



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order to end the tenancy early due to health or safety reasons under section 56 of the Act and receive an order of possession, and to recover the filing fee.

The landlord and the tenant attended the teleconference hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained and an opportunity to ask questions was provided. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any service issues and both parties confirmed having received documentary and digital evidence and had the opportunity to review all of the documentary and digital evidence prior to the hearing.

Preliminary and Procedural Matter

The participants confirmed their respective email addresses at the outset of the hearing and stated that they understood that the Decision would be emailed to them.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession of health or safety reasons under section 56 of the Act?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A “year-to-year” tenancy began on September 1, 2020, which I find is a one-year fixed-term tenancy that converted to a month-to-month tenancy after September 1, 2021 under the Act.

The landlord writes in their application the following:

She sent some guy to our house without notice when she was away. We are extremely worried about this never ending hostilities which is escalating. She has tried many times to start a fire She attacked our trees to satisfy her anger She is the only 1 has the key to the sheds and broke into them She blocks the driveway & tries to burn the house to make sure we cant escape. She blow her smoke in my face as I was cutting the lawns and recorded me Attacking my furniture's & damaging suit

[reproduced as written]

For ease of reference and clarity, I have separately and numbered the issues, which I will deal with individually and in my analysis below as follows:

1. She sent some guy to our house without notice when she was away.
2. We are extremely worried about this never ending hostilities which is escalating.
3. She has tried many times to start a fire
4. She attacked our trees to satisfy her anger
5. She is the only 1 has the key to the sheds and broke into them
6. She blocks the driveway & tries to burn the house to make sure we cant escape.
7. She blow her smoke in my face as I was cutting the lawns and recorded me
8. Attacking my furniture's & damaging suit [suite]

The parties were advised at the outset of the hearing, that to end a tenancy pursuant to section 56 of the Act, involves a 2-part test and carries a high burden to prove the following:

1. The landlord has provided sufficient evidence to support that at least one of the following has occurred:

(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

2. The matter is so serious 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 (1 Month Notice to End Tenancy for Cause) to take effect.

Regarding issue 1, the parties were advised during the hearing that sending someone to the rental property while the tenant is away would not meet the high burden of ending the tenancy pursuant to section 56 of the Act.

Regarding issue 2, although the evidence of the parties, including video evidence supports that both parties treat each other with hostility and disrespect, the landlord confirmed during the hearing that the tenant has not physically assaulted the landlord during the tenancy. As a result, an acrimonious landlord/tenant relationship would not meet the high burden of ending the tenancy pursuant to section 56 of the Act.

Regarding issue 3, the landlord alleges that the tenant has tried many times to start a fire. In support of this allegation, the landlord submitted 2 video clips. The first video was taken on June 7, 2022 and the second video was taken on June 15, 2022.

The first video shows a coffee container, that the tenant confirmed was a compostable Tim Horton's coffee container that is lined with foil but is made of cardboard, which the

tenant called an ashtray (Ashtray). There is a small amount of smoke coming out of the Ashtray, which was left unattended.

The second video shows a larger amount of smoke coming out of the Ashtray, which again was left unattended. The landlord decided to present the June 15, 2022 video first and the tenant admitted that the Ashtray was a poor choice given that it was flammable. The tenant admitted that they must have forgot to extinguish their cigarette properly before leaving the Ashtray but that it was an “isolated incident”.

The landlord then presented the second video, taken earlier on June 7, 2022, which the landlord stated was not an “isolated incident” as the tenant once again left the Ashtray with an unextinguished cigarette that resulted in smoke coming out of the Ashtray. The Ashtray is located under a table outside of the rental unit and on a wooden deck.

Regarding issue 4, the landlord claims that the tenant attacked their trees and I have reviewed the videos submitted by the landlord and disagree that the tenant was attacking anything in those videos as I find the tenant was pruning, albeit without permission from the landlord based on the statement of the landlord. The parties were advised during the hearing that this issue would not meet the high burden of ending the tenancy pursuant to section 56 of the Act, given the evidence submitted.

Regarding issue 5, the landlord alleges that the tenant is the only person to have the key to the sheds and broke into them, however admitted during the hearing that to their knowledge nothing was stolen. I will address this issue further in my analysis below.

Regarding issue 6, the landlord alleges that the tenant blocks the driveway and tries to burn the house to make sure the landlords are unable to escape. The parties were advised during the hearing that the parking photos do not meet the high burden of ending the tenancy pursuant to section 56 of the Act, given the evidence submitted.

Regarding issue 7, the tenant’s two videos were reviewed regarding this issue, which will be addressed in my analysis below. The video does not show the tenant approaching the landlord to blow smoke but does show the tenant blowing a lot of cigarette smoke towards the landlord from the deck they are on.

Regarding issue 8, the landlord alleges that the tenant is attacking their furniture & damaging suit [suite]. The landlord did not present any evidence regarding this issue, which I will address in my analysis below.

In addition to the above, the landlord presented a photo showing a washing machine being plugged into a power bar, which the tenant stated they did due to the landlord turning off power in the rental unit. As a result, the parties had differing opinions on what the photo represented, with the landlord alleging that the tenant was deliberately plugging the washing machine into a power bar to blow the breaker on purpose. The tenant denies that and stated that the power bar was only necessary due to the landlord shutting off the breaker to the washing machine.

The landlord submitted their application on August 15, 2022. The parties confirmed during the hearing that they have an upcoming dispute resolution hearing scheduled for October 3, 2022, that will deal with, in part, a 1 Month Notice served on the tenant by the landlord.

Analysis

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

As noted above, section 56 of the Act applies and requires a two-part test, and therefore is a higher burden to prove than a 1 Month Notice would require.

Issue 1 – As indicated above, the parties were advised during the hearing that sending someone to the rental property while the tenant is away would not meet the high burden of ending the tenancy pursuant to section 56 of the Act. As a result, I find the landlord has provided insufficient evidence to support ending the tenancy early pursuant to section 56 of the Act.

Issue 2 – I find the evidence before me supports that the landlord and tenant have an acrimonious relationship and both act inappropriately towards each other. The landlord denied, however, that the tenant has assaulted them. Therefore, I find the landlord has provided insufficient evidence to support ending the tenancy early pursuant to section 56 of the Act for this issue.

Issue 3 – Although the landlord alleges that the tenant has tried many times to start a fire, I find the video evidence does not support that the tenant intentionally left a cigarette unextinguished. Further, I note that the landlord did not submit a warning letter after the June 5, 2022 video, which I find would have been a reasonable step if they

were so concerned about what was shown on the video. In addition, I find that by waiting between the last video regarding smoking coming from an Ashtray taken on June 15, 2022 and the date the landlord applied for an early end of tenancy on August 15, 2022, that the landlord was not concerned enough to apply for dispute resolution earlier or a timely manner. Given the above, I find that the video evidence does not support that the tenant was attempting to burn down the home or that the cigarette was left unattended on purpose.

I find the tenant's use of a cardboard container as an ashtray demonstrates poor decision making on the part of the tenant. Therefore, I make 2 orders against the tenant as follows:

1. **I ORDER the tenant to immediately and safely dispose of their current cardboard ashtray and instead use a metal container as an ashtray to address any fire hazard.**
2. **I ORDER the tenant not to leave cigarettes unattended or unextinguished.**

These orders are made pursuant to section 62(3) of the Act. Failure to comply with my orders could result in another application by the landlord for an early end to the tenancy. I have issued these orders for two reasons. Firstly, the tenant stated that leaving a cigarette without extinguishing it was an "isolated incident", which I find the video evidence proves is false. Secondly, the deck where the tenant smokes is made of wood and therefore does represent a fire risk, however, I disagree with the landlord that the tenant "has tried to start a fire" where the landlord infers that the tenant was purposely attempting to light a fire, which I find there is insufficient evidence to support.

Issue 4 - The landlord claims that the tenant attacked their trees. I find the videos submitted by the landlord do not support this. I disagree that the tenant was attacking anything in those videos and find the actions of the tenant is pruning. I caution the tenant not to prune anything on the property belonging to the landlord without written permission of the landlord. Given the above, this issue would not meet the high burden of ending the tenancy pursuant to section 56 of the Act, given the insufficient evidence submitted.

Issue 5 - The landlord alleges that the tenant is the only person to have the key to the sheds and broke into them, however, I find the landlord admitted during the hearing that to their knowledge nothing was stolen. Given the above, this issue would not meet the

high burden of ending the tenancy pursuant to section 56 of the Act, given the insufficient evidence submitted.

Issue 6 - The landlord alleges that the tenant blocks the driveway and tries to burn the house to make sure the landlords are unable to escape. I find the parking photos do not meet the high burden of ending the tenancy pursuant to section 56 of the Act, given that I find to be insufficient evidence submitted.

Issue 7 – I have carefully reviewed the tenant’s two videos and I find the video does not show the tenant approaching the landlord to blow smoke at them. I find the photo does support that the tenant is blowing a lot of cigarette smoke towards the landlord from a distance from the deck they are on. Although I find this to be a taunting action on the part of the tenant, which could result in a 1 Month Notice being issued, I find this does not meet the threshold and high burden of proof to end the tenancy early pursuant to section 56 of the Act.

Issue 8 - The landlord alleges that the tenant is attacking their furniture and damaging the suite and that the word “suit” is a typographical error on the part of the landlord. As landlord did not present any evidence regarding this issue, I find the landlord has provided insufficient evidence to support that the tenancy should end early due to this allegation.

As the landlord also presented a photo showing a washing machine being plugged into a power bar find the following. The burden of proof in this matter is on the landlord and not the tenant. In addition, 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. Given that both the tenant’s version of events (tenant accusing landlord of shutting off the breaker/power) and the landlord’s version of events (landlord accusing tenant of purposely connecting the power cord from the washing machine to a power bar to trip the breaker) could be true, I find that due to the landlord having the burden of proof that this issue fails to support an early end of tenancy pursuant to section 56 of the Act.

Given the above, the landlord’s application fails in its entirety. As such, the filing fee is not granted as a result.

The landlord has proven that there is a very acrimonious relationship between the parties to which I find both parties are at fault. Therefore, both parties are encouraged to act appropriately, with respectful communication and conduct for the remainder of the tenancy.

Conclusion

The application fails in its entirety.

The tenancy shall continue until ended in accordance with the Act.

I have made orders against the tenant as noted above.

The filing fee is not granted.

This decision will be emailed to both parties.

Given the obvious acrimonious relationship between the landlord and tenant, both parties are encouraged to act appropriately, with respectful communication and conduct for the remainder of the tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 14, 2022

Residential Tenancy Branch