



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: ET FFL

Introduction

The landlord seeks orders under section 56 the *Residential Tenancy Act* (the “Act”). In addition, the landlord seeks to recover the filing fee under section 72 of the Act.

A dispute resolution hearing was held on October 21, 2022. All three tenants and an agent for the landlord attended the hearing. The agent, and the two tenants who testified, were affirmed. There were no service of evidence issues.

Issues

Is the landlord entitled to

1. orders under section 56 of the Act?
2. recover the cost of the application filing fee under section 72 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The agent gave evidence that the landlord seeks orders under section 56 of the Act “due to the acts of the tenants.” One act included what appears to be an accidental fire. The other issue concerns occupants in the downstairs basement suite who are afraid of the tenants (who reside in the upper, or main floor of the property).

A fire occurred in the early morning hours of September 1, 2022. The basement occupants called the fire department. When the fire department arrived, the tenants did not come out, and the police attended to the rental unit to speak with the tenants.

The agent testified that "it was a big fire." He reiterated however, that there is no evidence that the fire was intentional, and that it was probably an accident. Photographs of the fire damage were submitted into evidence. According to the agent the tenants tried blaming the fire on the downstairs occupants. The downstairs occupants thus felt "very, very threatened."

The agent also testified that the downstairs occupants are scared to return to their rental unit, have not done so, and in fact have given a notice to end tenancy whereby the downstairs tenants will be moving out at the end of October. In respect of the documentary evidence submitted, the agent referred me to written statements of both the landlord and the downstairs occupants.

In addition, the agent testified that the tenants are "causing other problems." This includes storing stuff in the garage that is highly flammable and is a fire hazard. The tenants have also built some sort of structure in the backyard, and the tenants threatened the landlord when he spoke to the tenants about the structure. There is also damage to the rental unit consisting of damage to the door and the door latch, and so forth.

All of these matters have, according to the agent, caused the landlord a lot of stress. This includes panic attacks and loss of sleep. The landlord is worried about making mortgage payments when the downstairs occupants vacate, and the landlord was apparently chased after by one of the tenants when the landlord served a notice to end the tenancy on the tenants. (It is noted that the landlord served a *One Month Notice to End Tenancy for Cause* on September 28, 2022; that notice is not a matter before me and I make no findings as to whether the notice is valid or not, or, whether the landlord may seek an order of possession based on the notice.)

The tenant (D.R.) testified under oath that the landlord's allegations are "all false." There have been no threats by him or anyone else against the landlord or the occupants. The tenant has not even spoken to the female occupant in the downstairs rental unit, and those occupants' complaints about the tenant "are total bunk." Nor, he added, did he ever raise his voice at anyone. He admitted that he sometimes speaks loudly.

Tenant D.F. testified that under oath that around 11 PM on the evening of the fire, he went outside and had a cigarette. Once he finished, he put the cigarette butt in an ashtray and went back to bed. At some point after he is awoken by his girlfriend yelling "Fire! Fire! Wake up!" He then spoke to the police who were at the front door.

The tenant had no idea how the fire occurred and noted that there is no evidence that it was caused by suspicious means. He briefly noted that there were series of unexplained fires in the neighbourhood, perhaps caused by an arsonist.

Analysis

The landlord's application is made under section 56(1) of the Act, which states that a landlord may make an application for dispute resolution requesting (a) an order 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, and (b) an order granting the landlord possession of the rental unit.

Section 56(2)(a) and (b) of the Act states that an arbitrator must be satisfied that

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.

In this case, the landlord and the tenants dispute the facts. The landlord's agent argued that the tenants' actions have given rise to a situation where the tenancy must be ended under section 56 of the Act. However, the tenants dispute the entirety of those allegations, referring to them as "all false." When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above* their

testimony to establish their claim. In the case before me, I find the landlord has failed to provide any evidence that sufficiently counters the tenants' denials of what occurred.

While the agent referred to written statements of the both the landlord and one of the downstairs occupants, neither statement is a properly sworn affidavit, and neither I nor the respondents have the opportunity to verify the claims and statements made in those statements. In other words, it is my finding that the statements, in their present form, are hearsay evidence and I place upon them little evidentiary weight. Certainly, it would have been a different matter altogether had either the landlord, or the downstairs tenants, or both had attended the hearing and testified under oath. However, I am not persuaded that the landlord has established his case, as the evidence is nothing more than unverified, unsworn hearsay evidence.

I have also reviewed the photographs submitted by the landlord and am not persuaded that they prove a state or condition of the rental unit giving rise to a ground under section 56 of the Act.

In summary, taking into consideration all the evidence before me, it is my finding that the landlord has not proven on a balance of probabilities that they are entitled to order under section 56 of the Act.

The landlord's claim to recover the cost of the filing fee is also dismissed.

Conclusion

The landlord's application is hereby dismissed, without leave to reapply.

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.

Dated: October 22, 2022

Residential Tenancy Branch