



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 an order ending the tenancy and an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). The landlord also seeks to recover the cost of the application filing fee under section 72(1) of the Act.

A dispute resolution hearing was held on November 10, 2022 and in attendance were an agent for the landlord, two tenants, and a family member who testified for the tenants. The agent and the tenants’ family member were affirmed before testifying. There were no issues with respect to the service of the landlord’s evidence.

Issues

1. Is the landlord entitled to orders under section 56 of the Act?
2. Is the landlord entitled to recover the cost of the application filing fee?

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 tenancy began on July 1, 2022. Monthly rent is \$3,800.00 and the tenants paid a \$1,900.00 security deposit. There is a written tenancy agreement in evidence.

The landlord’s agent (hereafter “landlord” for brevity) testified that the primary reason for bringing this application is because the tenants have been negatively affecting the lives of the neighbours and also the downstairs tenant and his wife.

The tenant or tenants have purportedly threatened the downstairs tenant and his wife and apparently threatened to kill them. The police have been called on a few occasions. The landlord also testified that one of the tenants attacked Ali, the downstairs tenant.

Further, the landlord testified that there was a gas leak caused either deliberately or negligently by a tenant or the tenants which endangered the lives of the downstairs tenant and his wife.

In response, the tenant's family member (a cousin who testified on behalf of the tenants) testified that communication between the tenants and the downstairs tenant about various issues with the property (such as use of the garage) deteriorated. The downstairs tenant apparently came upstairs and got into a physical altercation with one of the tenants. They began pushing each other around, with the downstairs tenants calling the upstairs a thief. A week later the incident essentially repeated itself.

The downstairs tenants have made several false accusations about the tenants, including allegations that the tenants have been running a "whorehouse," an illegal gambling operation, and drug trafficking. The family member remarked that if they were actually engaged in these activities—which they are not—then they would "probably own a mansion by now" and not be renting. As for the gas leak, the family had a propane tank that they simply forgot to turn it off.

In rebuttal, the landlord briefly pointed out that the family member admitted to pushing Ali, and he "thanked" the family member for this testimony.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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 [*landlord's notice: cause*], and
- (b) an order granting the landlord possession of the rental unit.

In order to grant the orders under this section, 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, I am left with two, equally disparate but plausible versions of the facts. The landlord claims that at least one of the tenants attacked and threatened the downstairs occupant. If this were the case, then an eviction under section 56 of the Act would almost certainly follow. However, the tenants, through their cousin the family member who testified, dispute that this was the case. Indeed, their position is that it was the downstairs occupant Ali who instigated the altercations.

What is more, the person supposedly most affected by the tenants' behavior and actions—the downstairs occupant—did not testify under oath in the hearing. I am left with nothing but his uncorroborated and unsworn copies of text messages. Likewise, the neighbours who filed complaints about the tenants' behavior did not provide sworn affidavits or did they testify at the hearing. Nor, I should add, is there any documentary evidence to support the allegations that the tenants are running a den of iniquity.

When two parties in a dispute provide equally plausible accounts of circumstances related to that 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 above their third party, unverified testimony that the tenant or tenants have engaged in behavior that gives rise to a situation where the tenancy ought to be ended under section 56.

Therefore, in taking into consideration all of the oral and documentary evidence before me, it is my finding that the landlord has not proven on a balance of opportunities that the tenancy must be ended under section 56 of the Act. The application is therefore dismissed, including the claim for recovery of the filing fee under section 72(1).

While I make no findings of fact or law regarding the unrelated issue of rent, the tenants should be aware that they are required to pay rent as set out in their tenancy agreement and in compliance section 26 of the Act. The landlord remains at liberty to issue a notice to end the tenancy under section 46 of the Act should the tenants fail to pay rent.

Conclusion

The application is 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: November 11, 2022

Residential Tenancy Branch