



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Code: ET

Introduction

The Landlords seek to end the tenancy pursuant to section 56 of the *Residential Tenancy Act* (the “Act”).

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

The Landlords, in compliance with section 89(2)(b) of the Act, served and sent a copy of the Notice of Dispute Resolution Proceeding upon the Tenant by way of registered mail to the address at which the Tenant resides. Proof of the Notice of Dispute Resolution Proceeding being sent in this manner was a copy of the Canada Post registered mail tracking information and delivery information. The mail was not picked up because, according to the Tenant, he does not have two pieces of valid identification.

I am not inclined to find that service was not properly executed under the Act or under the *Rules of Procedure*. It is unreasonable for the Tenant to claim that he cannot retrieve mail sent to his address of residence because he does not have identification. Nowhere on the written tenancy agreement is there any indication that the Tenant’s address for service is to be different than the address of the rental unit. It is, rather, quite reasonable for the Landlords to send documents to the Tenant’s address of residence: that is, the rental unit.

For these reasons, it is my finding that the Landlords properly served the Notice of Dispute Resolution Proceeding and their evidence in a manner that fully complies with a method of service as set out in section 89 of the Act. As such, I also admit and will consider the Landlords’ documentary evidence submitted with this application.

Issue

Are the Landlords entitled to end the tenancy under section 56 of the Act?

Evidence and Analysis

In a dispute resolution proceeding, the applicant must prove their claim on a balance of probabilities (meaning “more likely than not”). I have considered the parties’ testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that I find relevant and necessary to explain the decision.

The tenancy began in October 2022 and monthly rent is \$3,000. (The Landlords have issued a 10 Day Notice to End Tenancy for Unpaid Rent. This decision will not address this or any other notices to end tenancy, and the parties are at liberty to either dispute the notice or to seek an order of possession on such notices to end tenancy.)

The Landlord testified that they need to end this tenancy because the Tenant has done “illegal construction”—primarily consisting of building a full kitchenette in the downstairs suite in which a subtenant resides—and because they have an illegal sublet. The Landlord also testified about an incident whereby his friend (and an RCMP officer) attended to the rental unit for the Landlords’ friend to conduct an inspection of the rental unit.

The Tenant allegedly threatened the two individuals and shouted at them. The Tenant did not let the friend enter the rental unit to conduct the inspection, claiming that he had not been properly given notice of the inspection. The Tenant also sent threatening texts, though having reviewed the text messages (most of which are from after the Landlords filed this application and are therefore not admissible) I do not find any overt threats.

The Tenant testified at length about the inspection and the circumstances surrounding that. He also testified that he built the downstairs kitchenette with the Landlords’ implied permission. He argued that the only reason the Landlords want to evict him is because he is collecting rent from his subtenant, a woman with triplets who lives downstairs.

The Tenant explained that “I’m a very threatening individual,” but his reaction was due to “someone skulking around” the property and because he was not properly given a notice of inspection. If there was any threat, it was directed at the attending RCMP officer; the RCMP received a blackeye courtesy of the Tenant in a previous, unrelated incident.

The Landlord seeks an order ending this tenancy early and an order of possession, pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). They also seek compensation for the cost of the application fee, pursuant to section 72 of the Act. Section 56(1) of the Act which states the following:

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 on a balance of probabilities 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 not persuaded by the Landlords' evidence that either the supposed "illegal construction" or the "illegal sublet" meets any of the categories of risks or adverse effects listed in section 56(2)(a) of the Act. There is no evidence that the "pulling of gas lines" created any such risk; indeed, that the Tenant is a plumber likely mitigated any such risk in the first place. Nor is there any evidence showing that the mom-with-triplets subtenant poses any such risk or creates any type of adverse situation to the Landlords.

As for the purported threats, there is insufficient evidence that the Tenant's language or demeanor on the date of the Landlords' friend and the RCMP officer attending to the

rental unit created a situation that meets section 56(2)(a) of the Act. Indeed, from the evidence before me, the “issue” appears to be between the Tenant and the police officer.

That said, the Tenant ought to consider addressing his self-described “threatening person” persona. Such a characteristic will not serve him well in future interactions with his landlords or others. (Not to mention that such a personality type does not lend itself to building a successful plumbing business.)

Taking into consideration all the evidence before me, I find on a balance of probabilities that the Landlords have not proven that they are entitled to orders under section 56(1) of the Act. The application is thus dismissed, and the tenancy shall continue until it is ended in accordance with the Act.

Conclusion

The application is hereby DISMISSED, without leave to reapply.

As noted above, the Tenant is at liberty to dispute any notice to end tenancy given by the Landlords, and the Landlords are equally at liberty to seek an order of possession based on any of those notices to end tenancy.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: July 21, 2023

Residential Tenancy Branch