



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 10, 2018 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlord and answered his question in relation to the process. The Landlord provided affirmed testimony.

Neither party had submitted evidence prior to the hearing. I addressed service of the hearing package. The Landlord testified that he posted two hearing packages addressed to the Tenants on the door of the rental unit on October 16, 2018. The Landlord testified that the packages were gone a few days later and so he assumes the Tenants took them from the door. The Landlord did not submit any evidence in relation to service of the hearing packages.

Based on the undisputed testimony of the Landlord, I find the Tenants were served with the hearing packages in accordance with section 89(2)(d) of the *Act*. I also find the hearing packages were served in sufficient time to allow the Tenants to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Landlord be granted an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified as follows. There is a verbal tenancy agreement between him and the Tenants in relation to the rental unit. The tenancy started April 23, 2018 and is a month-to-month tenancy.

The Landlord testified as follows in relation to the grounds for the Application. The Tenants have verbally threatened the upstairs tenants at the rental unit address. The upstairs tenants have a young family and the Tenants are disturbing them. The Tenants have made false accusations against one of the upstairs tenants.

The Landlord provided the following details. There was a water leak at the rental unit address which required the Landlord and one of the upstairs tenants to enter the maintenance room which is accessed from the rental unit. The maintenance room is a common area and not part of the rental unit. The maintenance room holds the electrical panel and hot water tank which has an open flame. It also contains gas and propane. When the Landlord and upstairs tenant went into the maintenance room, they found it full of the Tenants' belongings including paper products and cleaning products containing chemicals. The room was difficult to access because of the number of belongings stored in it. Further, the Tenants were storing flammable material in the room which created a fire hazard.

The Landlord testified that he told the Tenants they needed to move their belongings from the maintenance room. He said the Tenants were not happy about this and complained that they do not have enough room to store their belongings.

The Landlord testified that he subsequently went back to the maintenance room and the Tenants still had their belongings in the room. He said he told them again to move their belongings; however, the Tenants were not cooperative in this regard.

The Landlord further testified as follows. The upstairs tenants and the Tenants got into a verbal fight. The Tenants pulled out the wireless internet connection so that the upstairs tenants did not have access to the internet. The Landlord submitted that the Tenants damaged the property in this regard. The Landlord testified that the upstairs tenant plugged the internet connection in but that the Tenants unplugged it a second time. The Landlord testified that the upstairs tenant told the Tenants to plug the internet connection back in and that there was a further verbal disagreement between the parties about this.

The Landlord testified that the Tenants called the police and told them that the upstairs tenant had hit the female Tenant. The Landlord said the police came and investigated but found no evidence that this occurred. The Landlord submitted that the Tenants falsely accused the upstairs tenant of hitting the female Tenant.

The Landlord submitted that the Tenants have significantly interfered with and unreasonably disturbed the upstairs tenants. The Landlord also submitted that the Tenants have caused extraordinary damage to the residential property. The Landlord said the Tenants have put the rental unit address in danger by leaving flammables in the maintenance room where there is gas, propane and an open flame. The Landlord submitted that the situation is urgent because the flammables in the maintenance room are a fire hazard.

I asked the Landlord why he had not submitted any evidence in support of the Application. He said he was unable to get the police report in relation to the report by the Tenants about the upstairs tenant hitting the female Tenant. He acknowledged that he should have called the upstairs tenant as a witness at the hearing and said that he was unsure how to present evidence at the hearing.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early where two conditions are met. First, the tenants, or a person allowed on the property by the tenants, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

I am not satisfied that the Landlord has met his onus to prove the circumstances meet the two-part test set out in section 56 of the *Act* as the Landlord provided no evidence to support the

Application. In my view, it would not have been difficult for the Landlord to provide evidence. For example, the Landlord could have provided a witness statement from the upstairs tenants or called the upstairs tenants as witnesses at the hearing. I acknowledge that the Landlord stated that he was unaware of how to present evidence at the hearing; however, parties are expected to know their rights, obligations and the Rules of Procedure and are expected to seek out assistance if they are unsure about these.

In the absence of any evidence to support the Landlord's testimony about the actions of the Tenants, I find the Landlord has failed to prove that the two-part test in section 56 of the *Act* has been met and I dismiss the Application without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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 13, 2018

Residential Tenancy Branch