



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act), filed on July 6, 2020, for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act; and
- recovery of the filing fee.

The landlord, her interpreter, and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters- Evidence -

The landlord was assisted in the hearing by an interpreter.

Evidence submissions were discussed. The tenant, TT, said that she eventually was served with the landlord's evidence, after receiving the landlord's application; however, the landlord failed to serve the other tenant, MR. The landlord confirmed that she served only TT with her original evidence.

As to that evidence, the landlord failed to comply with Rule 3.10.1, which requires that to ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted to the RTB and served on each respondent.

The party submitting digital evidence must include a description of the evidence identification of photographs, such as a logical number system and description; a description of the contents of each digital file; a time code for the key point in each audio or video recording; and a statement as to the significance of each digital file.

The party serving the digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43).

Finally, before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

In this case, I find the landlord failed to serve each tenant, did not label her evidence, did not provide a description or identification of the evidence, and did not confirm with each tenant that they were able to gain access to the digital evidence.

I, however, out of an abundance of caution to ensure procedural fairness, included the landlord's original evidence for consideration.

In addition, the landlord submitted additional evidence to the Residential Tenancy Branch (RTB) on August 7, 2020.

Rule 10.1 requires the applicant to submit all evidence with their application for an expedited hearing, such as is the case here. I therefore excluded the landlord's additional evidence from any consideration in this matter, as it was not included with the landlord's application served to the tenants.

The landlord confirmed receiving the tenants' evidence.

Preliminary and Procedural Matters- testimony of witnesses –

As to the witness' testimony, at the conclusion of the landlord's testimony, I asked the landlord, through her interpreter, about the nature of their testimony and if they would be able to supply any evidence about the issues between the landlord and the tenants. This was explained to the landlord that any issues between the tenants and her neighbours were not relevant for consideration in this application.

The landlord, through her interpreter, provided a thorough and detailed explanation of what each witness would state, mainly about alleged issues between the tenants and the neighbours.

I considered the detailed statements of the landlord and find that the witness' statements came across as being rehearsed and prompted.

I determined that the witness' statements would therefore be not relevant and cumulative to the landlord's statements.

Preliminary and Procedural Matters- Prior dispute resolution matters -

I note that this is the third attempt by the landlord to end this tenancy which began on November 1, 2019. The landlord has filed a previous application seeking an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act, as is the case here.

In a Decision dated March 30, 2020, another arbitrator dismissed the landlord's application due to the lack of sufficient and compelling evidence by the landlord.

The landlord has also served the tenants a One Month Notice to End Tenancy for Cause on March 7, 2020.

The tenants filed an application for dispute resolution to dispute the Notice. In a Decision of May 21, 2020, another arbitrator granted the tenants' application and cancelled the Notice.

Those previous files are referred to on the style of cause page of this Decision.

I informed the landlord that she would have to provide evidence that has come into existence since the Notice issued on March 7, 2020, as she could not evict the tenants on matters that have already been decided.

Issue(s) to be Decided

Has the landlord met her burden of proof to show that she is entitled to an order of possession of the rental unit?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The rental unit is located in the basement level of a home owned and occupied by the landlord on the main level.

In support of her application, the landlord testified that on April 17, 2020, the electricity had gone off and that she was getting texts from her neighbours.

The landlord testified that the male tenant threatened to use his company vehicle to come tear down her house.

The landlord testified that the tenants used all the hot water available to the home and she had none to take her shower when she came in from work at night.

The landlord testified that the male tenant slams the door at 5:00 a.m. when he leaves for work and that the tenants have blocked access to the yard.

The landlord testified that her and her family's life have been impacted by the tenants, both physically and mentally.

The landlord's relevant evidence included videos and photographs.

Tenants' response –

The tenant testified that the police officers attended the residential property due to the rental unit being an illegal suite and that the bylaw officer informed the landlord she either had to take down the pool or put the fence back up.

The tenants denied slamming doors on purpose, and explained that it is hard to close the doors because the landlord continues to refuse to make the repairs to the door locks and latches.

The tenants submitted that the landlord makes excessive noise by stomping all around the rental unit, causing her daughter not to sleep.

The tenants said the landlord continues to send emails to the Residential Tenancy Branch (RTB), slandering the tenants; however, the landlord's email evidence is redacted, as it does not show the full chain of email communication.

The tenants' relevant evidence included videos they said were of the landlord screaming, of the bathroom and front door, and the washing machine.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In this instance, the landlord bears the burden of proving her application on a balance of probabilities.

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.

Section 56 of the Act is an extraordinary remedy which grants the Director authority to end a tenancy without a notice of end tenancy if sufficient cause is established and the landlord demonstrates that it would be both unfair and unreasonable to allow the tenancy to continue until a One Month Notice to End Tenancy for Cause under section 47 would take effect.

I deny the landlord's application as I find that the landlord has not met the test required under section 56 of the Act to end this tenancy early.

At the outset of the hearing, I advised the landlord that I would only consider evidence about events occurring after her issuance of the One Month Notice to End Tenancy for Cause she served the tenants on March 7, 2020. The arbitrator in the May 21, 2020 Decision on the tenants' application seeking cancellation of the Notice decided on the

matters occurring prior to that date, and determined that the landlord provided insufficient evidence to support that Notice. As a result, the Notice was cancelled.

Additionally, in a Decision dated March 30, 2020, another arbitrator dismissed the landlord's application for an order ending the tenancy earlier than the tenancy would end if a One Month Notice to End Tenancy for Cause were given under section 47 of the Act, as in the present case. The landlord's application in that instance was made on March 16, 2020. The other arbitrator found the landlord submitted insufficient evidence to support that application.

In this third attempt by the landlord to end the tenancy beginning on November 1, 2019, I find the issues raised by the landlord in the hearing were substantially the same to the issues addressed by two other arbitrators in the above referenced Decisions. These issues relate to the landlord's complaints about lack of hot water, banging doors and excessive noise by the tenants.

The landlord's digital evidence consisted of either undated and/or unidentified videos, without explanation how they related to this application or matters pertaining to issues occurring after March 7, 2020, the date she served the Notice on the tenants. I therefore find the landlord has not presented any new evidence relating to matters after March 7, 2020. As a result, I find these present issues have previously been decided upon by other arbitrators and I cannot now re-decide the same issues.

As a result, I **dismiss** the landlord's application, without leave to reapply, including her request to recover the filing fee, as I find she has not presented compelling evidence that these issues were new.

Information for the landlord –

As mentioned, as this is the third, unsuccessful attempt by the landlord to evict the tenants, I find it necessary to provide information to the landlord.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord.

Due to this, I find it necessary to caution the landlord that making repeated attempts to end the tenancy, such as is the case here, could result in the tenants being successful in future circumstances where they may seek compensation for a loss of quiet enjoyment and a devaluation of the tenancy.

A tenant is entitled to enjoy their home, free from the worry of further, unfounded eviction notices.

Conclusion

I have dismissed the landlord's application seeking to end the tenancy early as I have determined that the landlord has submitted insufficient evidence to support her application, as the issues raised have been previously decided upon by other arbitrators.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 12, 2020

Residential Tenancy Branch