



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 01, 2021 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”).

V.L. and L.T. (the “Agents”) appeared at the hearing for the Landlord. The Agents called two witnesses during the hearing, both of whom were not involved in the hearing until required. The Tenant appeared at the hearing with the Advocate. I explained the hearing process to parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence as well as the oral testimony and submissions of the parties and witnesses. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started December 01, 2019 and is a month-to-month tenancy.

The rental unit is a manufactured home owned by the Landlord.

V.L. provided the following relevant testimony. The Landlord is in the hospital and has dementia. L.T. is dealing with the rental unit and is looking at listing the house for sale. L.T. had an electrical inspection done. The rental unit cannot be sold without a “silver sticker”. It was determined that it is not feasible to bring the rental unit up to code. The rental unit is over 50 years old. It would cost over \$14,000.00 to re-wire the rental unit. L.T. was told to disconnect the power for safety reasons as there is a possibility of fire. The rental unit is not habitable. The electrical issues pose a fire hazard and safety risk.

V.L. provided the following further relevant testimony. The Tenant has not allowed access to the rental unit. They have asked for repeated access and cannot get into the rental unit. When they did enter the rental unit, there was mold throughout. The ceiling is hanging down. There is no proper stove or hot water due to the access issue. The rental unit is infested with rodents. The rental unit is not a healthy place for the Tenant to live and is not habitable.

I asked V.L. how the issues raised are due to the Tenant. V.L. testified that the Tenant has allowed the rental unit to deteriorate without letting the Landlord know about it. V.L. testified that the Tenant will not allow access for anything to be done.

I asked V.L. if the Landlord or an agent for the Landlord has done regular inspections of the rental unit and V.L. replied that the Landlord had not due to mobility issues and dementia.

I asked V.L. how many times the Tenant had denied access to the rental unit and V.L. said she does not know. L.T. testified that he asked for access once verbally and the Tenant told him he could not access the rental unit even with written notice. L.T. testified that the Landlord could not get into the rental unit previously and did not have a key. V.L. testified that she gave written notice to access the rental unit and the Tenant called a number of times trying to deny access and change the date of access.

Witness V.D. testified that she entered the rental unit with the Agents on March 30, 2021 and observed the smell of rat urine, an excessive number of personal belongings and that the stove was a mess with the door hanging off.

Witness A.J. is an electrician. A.J. mostly testified about electrical issues in the rental unit. A.J. testified that none of the electrical issues were caused by the Tenant or due to the Tenant. A.J. also testified that he was contacted about installing a hot water tank in the rental unit, but the Tenant cancelled the appointment.

The Tenant provided the following relevant testimony. She has not done anything wrong in relation to the issues raised. She let the Landlord know when there were issues with the rental unit. It was the Landlord who did not and would not deal with the issues in the rental unit. The Landlord lived on the same property until December of 2020 or January of 2021. She has never been provided proper written notice for entry into the rental unit. The rental unit is not in such a state that it cannot be fixed. The electrical does not pose a risk of imminent danger.

The Advocate submitted that the issues raised by the Agents are not the fault of the Tenant.

In reply, the Agents stated as follows. There is no money to make repairs on the property. L.T. must sell the property to care for the Landlord. L.T. cannot get an electrical inspection on the home. The rental unit is too old. L.T. advised the Landlord in 2018 not to rent the home to anyone due to the condition of it. L.T. is not so concerned with anything the Tenant has done but the issue is the Tenant's safety. The Landlord did live on the property up until late 2020. L.T. became involved in the tenancy in the middle of February of 2021. V.L. became involved in the tenancy March 25, 2021.

The Landlord submitted the following relevant documentary evidence:

- Documentary evidence about the electrical issues in the rental unit
- An invoice for a hot water tank
- Photos of the rental unit
- Correspondence about the hot water tank and the Tenant refusing access to install it

The Tenant submitted a Notice of Entry for March 30, 2021.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, **the tenant, or a person allowed on the property by the tenant, 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, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

Upon considering the evidence before me, I am not satisfied the Landlord has met his onus to prove that the circumstances meet the two-part test under section 56 of the *Act*. I am not satisfied based on the evidence provided that the Tenant has caused the serious issues raised about the rental unit. Based on the evidence, I find it more likely than not that the serious issues with the rental unit are due to the age of the rental unit and the Landlord failing to maintain the rental unit, which was the Landlord's responsibility pursuant to section 32 of the *Act*.

I do not accept that the Tenant is at fault for the serious issues with the rental unit due to not notifying the Landlord of the issues for the following reasons. The Landlord would have been aware of the age of the rental unit and should have maintained it

accordingly. The Landlord lived on the property and should have been aware of the condition of the rental unit. The Landlord should have been doing regular inspections of the rental unit. I note that if the Landlord was personally unable to meet his obligations, he should have had an agent acting for him addressing the issues with the rental unit. The Tenant testified that she advised the Landlord of issues with the rental unit and it was the Landlord who did not address the issues. I do not have evidence from the Landlord contradicting the Tenant's testimony about this. I do not accept that the Agents know whether the Tenant advised the Landlord of issues with the rental unit during the tenancy as they were not involved in the tenancy until February and March of 2021. In the absence of further evidence, I accept that the Tenant advised the Landlord of issues with the rental unit.

Given I am not satisfied that the Tenant is at fault for the serious issues with the rental unit, I am not satisfied the first part of the two-part test has been met as it is about action or inaction of the Tenant or a person allowed on the property by the Tenant.

The only issues raised which can be attributed to the Tenant are the excessive belongings in the rental unit and the Tenant denying access to the rental unit. I do not find either of these issues to be urgent and therefore I do not find that they meet the second part of the test under section 56 of the *Act*. Further, I am not satisfied based on the evidence provided that the Tenant has denied access when agents for the Landlord attempted to enter in accordance with section 29 of the *Act*. The Tenant does not have to agree to agents for the Landlord accessing the rental unit and if the Tenant does not agree then the agents are required to comply with section 29 of the *Act*. Asking the Tenant verbally to enter and the Tenant not allowing this is not the Tenant denying lawful access.

In the circumstances, I am not satisfied the Landlord has provided sufficient evidence to prove that the circumstances meet the two-part test under section 56 of the *Act*. Therefore, I decline to issue an Order of Possession based on section 56 of the *Act*. The Application is dismissed 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: May 05, 2021

Residential Tenancy Branch