

## **Decision**

### **Dispute Codes:**

ET

### **Introduction**

This Dispute Resolution hearing was convened to deal with the landlord's application seeking an order to end the tenancy early without notice to the tenant. Both the landlord and tenant appeared and each gave affirmed testimony in turn.

### **Issue(s) to be Decided**

The landlord was seeking an Order of Possession based on section 56(1) of the *Residential Tenancy Act*, (the *Act*), which permits the landlord to end a tenancy without notice to a tenant in certain restricted and compelling circumstances. In making a determination on this matter, the following issue must be to be decided based on the testimony and the evidence presented during the proceedings:

- Has the landlord established sufficient proof that the criteria contained in section 56(2) of the *Act* has been met to justify ending the tenancy and entitle the Landlord to be granted an Order of Possession under the *Residential Tenancy Act*, (the *Act*).

The onus of proof is on the landlord/applicant

### **Background and Evidence**

The landlord had submitted into evidence a written statement and photographs showing close-up views of wounds and a copy of a medical report dated September 27, 2008. Also submitted into evidence was a written statement from neighbours who stated that they were aware of the problem that the landlord was having with the tenant, and a copy of the landlord's application to police for copies of a police report under Freedom of Information and Protection of Privacy

in regards to an incident that occurred on September 25, 2008. The landlord testified that on September 25, 2008, it was discovered that the landlord's laundry had been removed from the machines in the common area and strewn about the floor. The landlord testified that the co-landlord, not in attendance to testify at this hearing, had then approached the tenant's door to discuss the laundry issue and was physically attacked by the tenant with a hammer, resulting in an injury that required medical attention. The landlord testified that the altercation also required police attendance and that assault charges were laid by police against the tenant.

The tenant disputed the above testimony. The tenant acknowledged that he had removed the landlord's laundry and stated that this was also the landlord's practice in regards to the tenant's laundry. The tenant disputed that assault charges were pending against him. The tenant denied threatening the landlord with a hammer and testified that there was no physical contact between the tenant and the landlord.

### **Analysis**

The Act provides that a landlord is entitled to end a tenancy without notice to the tenant in situations where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, jeopardize a lawful right or interest of another occupant or the landlord or cause extraordinary damage to the residential property

And provided that the landlord also proves that 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.

Based on the testimony of both parties, I find as a fact that the landlord's laundry was removed by the tenant and also that the landlord has removed the tenant's laundry in the past. I find as a fact that it was the landlord who went to the door of the tenant on September 25, 2008. I find as a fact that police attended and intervened. However, it is not clear exactly what transpired. I also accept that the landlord had sustained some injuries that are evident in the photographs and that are discussed in the doctor's report dated September 27, 2008. However the landlord's verbal testimony pertaining to how and when these injuries were inflicted was vehemently disputed by the tenant. The landlord's allegation that police laid assault charges against the tenant was not proven by the landlord and was again vigorously denied by the tenant. The written testimony from the neighbours indicates that they did not directly witness the alleged assault. I note that despite the incident having occurred on September 25, 2008, the Landlord did not issue a One-Month Notice to End Tenancy for Cause prior to, nor immediately after, the incident. Moreover, I note that the landlord's application for an Order to End the Tenancy without notice was filed two weeks after the alleged incident. The landlord did not explain the reason for the delay.

Section 56 provides a remedy that is reserved for situations in which there is a measure of urgency, threat of imminent harm or liability risk such that it would warrant the immediate removal of the tenant from the premises without any notice and it falls on the landlord to establish that this is clearly the case.

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord, has the onus of proving, during these proceedings, that ending the tenancy is justified under the Act. When the

evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

Based on the evidence and the testimony given by both parties, I am unable to find that it would be unreasonable and unfair to the Landlord to wait for a notice under section 47 to take effect. Therefore, I find that the criteria to satisfy section 56(1) has not been met by the applicant.

### **Conclusion**

Accordingly, I hereby dismiss this application without leave to re-apply.

October 20, 2008

Date of Decision