



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

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 parties appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The landlord is 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*). This requires a determination of whether both of the following has occurred:
 - a) the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed , seriously jeopardized the health or safety or a lawful right or interest of the landlord or other occupants, or has put the landlord's property at significant risk or engaged in illegal activity that has resulted in causing damage, and affecting the quiet enjoyment, security, safety,

physical well-being, lawful right or interest of another occupant of 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.

Background and Evidence

The landlord had submitted into evidence a copy of a written statement by the landlord that alleges “unsavory people” are visiting the tenant, and that the Narcotics Division of the RCMP conducted a “raid” on November 25, 2008. The landlord testified that the tenant has been conducting illegal activities and that this was discovered because the tenant shares a telephone line with the landlord’s business and the business line of another tenant who rents a commercial unit in the same building. The landlord testified that the conduct of the tenant has threatened the security of the property and other residents. The landlord testified that his rental business and his professional service business are both being affected and that other renters have expressed the intention that they will move. The landlord testified that a police officer advised the landlord to end the tenancy on the basis of the drug-related activities being alleged. The landlord testified that a One-Month Notice to End Tenancy for Cause dated November 27, 2008, with an effective date of December 31, 2008 was issued to the tenant and the landlord supplied a copy of this notice. However, due to the nature of the conduct and the problems, the situation has become significantly more urgent and the landlord decided that it warrants an immediate end to the tenancy.

The tenant testified that the activities of the tenant and his associates pose no threat at all to the landlord or other occupants of the building. The tenant acknowledged receiving the One-Month Notice to End Tenancy for Cause and

confirmed that this notice was not disputed by the tenant within ten days of receipt. In regards to the problems caused by the shared telephone, the tenant stated that he is willing to allow the phone jack to be removed from his unit by the landlord, provided that the landlord gives proper written notice to enter the unit. The tenant was hopeful of getting a mutual agreement as to when the tenancy would end and the tenant testified that he is willing to vacate, on consent, but would not be able to commit to an earlier date than January 31, 2008, because he needs to search for another place to live. The landlord was not willing to agree to the terms proposed by the tenant.

Analysis

Early End To Tenancy Without Notice

Section 56 of 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 and evidence put forward by the landlord and the tenant during these proceedings, I find that the landlord has failed to meet the burden of proof in satisfying the criteria set out in section 56 of the Act to justify an immediate end to this tenancy without notice. The purported conduct was not sufficient nor was it supported by independent evidence. Moreover, the landlord's testimony on the subject was disputed by the tenant. I do not find that it would be unreasonable and unfair to the Landlord to wait for a notice under section 47 to take effect.

One Month Notice To End Tenancy for Cause

Based on the testimony of the landlord, and despite the fact that I found that the landlord did not provide sufficient evidence to support that the conduct of this tenant would warrant the ending of the tenancy under section 56, I find that an Order of Possession will be issued in favour of the landlord based on the One-Month Notice. The reason for this determination is because the tenant was served with a One-Month Notice to End Tenancy for Cause and did not make an application for dispute resolution to dispute the Notice within 10 days. Therefore, under section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Given the above, I find that the landlord is entitled to an Order of Possession under the Act effective December 31, 2008.

I also find that the shared telephone jack must be removed from the tenant's unit by the landlord forthwith.

Conclusion

Accordingly, I hereby order that this tenancy will end pursuant to the Notice dated November 27, 2008 and grant the Landlord an Order of Possession effective December 31, 2008. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I also order that the landlord shall remove or disable the shared telephone connection that is located in the tenant's residence. I order that the landlord comply with the Act by serving 24-hour written notice to enter the suite to do so.

Dated: December 2008