



Dispute Resolution Services

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

Decision

Dispute Codes:

ET and FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to end the tenancy early and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession; to end the tenancy early and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 56(1) and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this is a long term tenancy that began prior to the Landlord purchasing the building in 2007, and that the relationship between the two parties has been acrimonious during the past year.

The Landlord stated he knocked on the Tenant's door at approximately 3:00 a.m. on January 01, 2009, as he was upset that the Tenant had piled snow in front of his stairs. He stated that there was a loud argument during which the Tenant was cursing at him. He stated that the incident ended when the Tenant threw a shovel at him while he was walking away. He stated that he reported the incident to the RCMP, however the police are not pursuing criminal charges in the matter.

The Tenant stated that he heard a loud banging on his front door at approximately 3:00 a.m. on January 01, 2009. He stated that when he looked outside the Landlord was throwing large chunks of ice at his door. He stated that there was a loud argument during which the Landlord threatened to kill him. He stated that the Landlord was holding a shovel during the incident so he picked up a shovel that was beside his front door. He stated that at some point during the argument the men were banging the shovels together. He stated that near the end of the argument the Landlord reached down to grab more snow, at which time the Tenant went back to his rental unit and quickly slammed his door. He stated that he threw the shovel he was holding onto the ground just before he slammed his door, and he does not know if the shovel hit the Landlord.

During the hearing the Tenant agreed that the tenancy was untenable. The Landlord and the Tenant mutually agreed to end this tenancy on February 28, 2009, as both parties clearly indicated that they did not wish to continue the tenancy.

Analysis

After considering all of the oral and written evidence submitted, I find that the Landlord has not satisfied the legislative requirements to end this tenancy early.

Although it is clear there was a confrontation between the Landlord and the Tenant, the evidence shows that the Landlord played a significant role in the confrontation. Although I accept the Landlord's evidence that he was injured during the confrontation, I am not convinced that the incident would have occurred if the Landlord had attempted to resolve his concerns in a different manner.

As the parties mutually agreed to end this tenancy on February 28, 2009, I find that the circumstances do not warrant ending the tenancy earlier than that date.

Conclusion

Based on the mutual agreement of the parties, I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 28, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I dismiss the Landlord's application for compensation for the filing fee paid by the Landlord for this application, as I find this application to be without merit.

Date of Decision: January 13, 2009.

