



Dispute Resolution Services

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

Decision

Dispute Codes: ET FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession based on an early end to tenancy application and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on January 07, 2009. A copy of the Canada Post receipt was submitted in evidence. The Canada Post website shows the mail has not been picked up by the recipient. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to end the tenancy early; to an Order of Possession on the basis of his application 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 and 72 of the *Act*.

Background and Evidence

The Landlord stated that this tenancy began on October 01, 2008. He stated that he did not receive a rent payment for January. He stated that he has made several unsuccessful attempts to contact the Tenant and the Tenant's girlfriend. He stated that he went to the rental unit in January and met with people he did not know, who advised him that the Tenant was not home and that the Tenant's girlfriend had moved out. He advised the occupants that they could not reside in the rental unit, and they have subsequently vacated the rental unit.

He stated that he entered the rental unit in January after providing twenty-four hours notice of his intent to enter, and he located drugs paraphernalia inside the rental unit. He contacted the RCMP, who attended the residence and sized the paraphernalia, at which time the RCMP advised him that the Tenant was in jail. He did not know when the Tenant had been incarcerated, nor did he know when the Tenant was going to be released from jail.

The Landlord stated that he has served the Tenant with a Notice to End Tenancy for unpaid rent.

Analysis

Section 56(1) of the Act authorizes me to end a tenancy earlier than the tenancy would end if notice to end the tenancy were given under section 47 and grant an order of possession for the rental unit if the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) has 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) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property.

I find that the Landlord has submitted insufficient evidence to show that the Tenant or persons permitted on the property have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I find that the Landlord has submitted insufficient evidence to show that the Tenant or persons permitted on the property have seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I find that the Landlord has submitted insufficient evidence to show that the Tenant or persons permitted on the property have put the Landlord's property at significant risk.

I find that the Landlord has submitted insufficient evidence to show that the Tenant or persons permitted on the property have engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; or that has 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 that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

I find that the Landlord has submitted insufficient evidence to show that the Tenant or persons permitted on the property have caused extraordinary damage to the residential property.

Conclusion

As the Landlord has failed to establish that he has grounds to end this tenancy early, I hereby dismiss his application to end the tenancy early and his application for an Order of Possession.

As the Landlord's Application for Dispute Resolution has been without merit, I hereby dismiss his application to recover the filing fee paid by the Landlord for this application.

The Landlord retains the right to make application for an Order of Possession pursuant to section 46 or 47 of the *Act*.

Dated: January 15, 2009