

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: ET, FF

Introduction

This was an application by the landlord pursuant to section 56 of the *Residential Tenancy Act*, for an order to end the tenancy on a date earlier than effective date of the one month notice to end tenancy for cause which is April 09, 2009. The landlord also applied for an order of possession and for the recovery of the filing fee pursuant to section 72.

The landlord lives in a unit which is located above the rental unit. The notice of hearing dated March 17, 2009 was served on the tenant in person on March 19, 2009. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Does the landlord have cause to end the tenancy early?

Background and Evidence

The tenancy began on December 01, 2008. The monthly rent is \$525.00. The landlord stated that a clause in the tenancy agreement does not permit smoking in the rental unit. The landlord has submitted into evidence a log of the tenant's undesirable activities for the months of December 2008 to March 2009. The log describes activities such as smoking, uttering threats, verbal abuse, excessive drinking, destructive behaviour and littering the yard. The landlord also complained about the tenant being noisy and disturbing other occupants.

On March 06, 2009, the landlord served a notice to end tenancy for cause on the tenant effective April 09, 2009.

The reasons for the notice include that the tenant is repeatedly late paying rent, has significantly interfered with the landlord, has adversely affected the quiet enjoyment,

security, safety and physical well-being of another occupant, and has not done required repairs.

On March 17, 2009 the landlord applied at the Residential Tenancy Branch for an order ending the tenancy early. The landlord also filed an updated log of tenant activities which include smoking, threats and noise. At the March 25, 2009 residential tenancy hearing, the landlord's son testified that the tenant has threatened to beat or kill him but has not done him any physical harm. The landlord has not reported these threats to the police.

Analysis

Section 56 (2) of the Act permits me to make an order ending a tenancy earlier than the effective date on the notice to end tenancy, only if I am satisfied that the tenant has done one or more 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.

In addition to proving that there is cause to end the tenancy, in an application of this nature, the landlord must clear a second hurdle. Under section 56(2)(b) of the Act, in order to establish a claim for an early end to tenancy, the landlord must establish that “it would be *unreasonable, or unfair* to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47” .

Section 56 is an extraordinary remedy that is reserved for situations in which there is a clear and present danger, or a genuine threat of imminent harm of such an extreme nature that it would warrant immediate intervention and removal of the tenant from the premises.

The activities as reported by the landlord have been ongoing since December 2008. The landlord waited until March 06, 2009 before she issued the one month notice to end tenancy. The update for tenant activities in March includes the same activities as those that existed at the start of the tenancy.

Based on the documentary evidence and testimony, I am not persuaded that it would be unreasonable or unfair for the landlord or other occupants of the residential property to wait while a one month notice to end tenancy takes effect. I note that the effective date of the landlord's one month notice is April 09, 2009 (two weeks from today's date).

While the landlord may have established cause to end the tenancy upon one month's notice, the landlord has not established grounds for an extraordinary remedy such as ending the tenancy earlier than the date stated on the notice to end tenancy. Since the landlord has not proven her case, she must bear the cost of filing this application.

Conclusion

Accordingly, based on the evidence as presented at this hearing, I find that the landlord is not entitled to an immediate Order of Possession under section 56(1), and hereby dismiss this application.

Dated March 25, 2009.

Dispute Resolution Officer