

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

ET

Introduction

This hearing dealt with the landlord's application seeking an early end to this tenancy pursuant to section 56 of the *Act*. Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Preliminary Issue

It was determined during the hearing that the landlord failed to provide a copy of the evidence he submitted as part of this application to the tenants. This is breach of the principals of natural justice and contrary to rule 3.1 of the *Dispute Resolution Proceedings Rules of Procedure*.

In most circumstances I would reject the landlord's evidence and refuse to consider it as part of the dispute resolution proceeding; however, in the circumstances before me I have accepted the late evidence as it is a copy of the tenancy agreement and move in condition inspection report. These documents are not prejudicial to the tenants. I have not accepted the photographs provided by the landlord.

Issue to Be Determined

Has the landlord established any grounds under section 56 of the *Act* to end this tenancy early or that it would be unreasonable or unfair to allow this tenancy to continue until the effective date of a one month Notice to End Tenancy for cause?

Background and Evidence

In reviewing the written tenancy agreement between the parties I accept that this tenancy began effective May 1, 2009 for the monthly rent of \$2,200.00 and a security deposit of \$1,100.00 paid on April 1, 2008. The tenancy is a fixed term lease for one year ending on April 30, 2010, at which point the tenants are expected to vacate the rental unit.

The landlord alleges that this tenancy agreement was for a fully furnished rental unit. I note that there is nothing in the tenancy agreement to support this statement; however, it does state in the move in condition inspection report, under the heading G. Repairs to be completed at start of Tenancy: that the tenants are to contact the landlord about removal of "stuff" and about "cleaners".

I accept based on the statements of both parties that the rental unit has a significant amount of the landlord's possessions in it which includes furnishings and specific valuables and personal documents of the landlord's. These items, and the removal of these items by the landlord, are the source of this dispute. The landlord takes the position that the rental unit was rented as a furnished unit and that the tenants are responsible for his personal possessions.

The tenants' stated that it was their understanding that the landlord would be collecting and removing many of these items. The tenants made arrangements on several occasions for the landlord to pick up his possessions but he failed to do so. As a result, many of the items have been removed by the tenants and placed into the garage.

The landlord is seeking an early end to this tenancy on the basis that the tenants have significantly jeopardized his lawful right and interest in the rental property and/or put his property at significant risk by moving his possessions into the garage in a manner he believes lacks care. The landlord also seeks to end this tenancy on the basis that the tenants' children were observed smoking on the roof the rental property.

With respect to the allegation that the tenants' children were on the roof smoking, the landlord stated that he was told this occurred by the neighbour. No evidence was provided to support this alleged event and it appears to be solely based on hearsay evidence provided by the neighbour.

The tenants' deny both allegations by the landlord. The tenants' argued that they have made arrangements to have the landlord's possessions removed as agreed to at the start of the tenancy. The tenants' pointed out that the move in condition inspection report states that they are to call the 'owner' to have the possessions removed. The tenants stated that the landlord first arrived on May 15, 2009 to remove a few items from the garage and then made subsequent arrangements to pick more items on May 25 and May 26, 2009. The tenants stated that the landlord did not remove many items on these three occasions.

The tenants also pointed out that they have been unable to use the office in the rental unit as it contains all of the landlord's personal documents including two filing cabinets which were subsequently removed by the cleaners. The tenants also stated that they have been unable to use the garage since all of the landlord's possessions are now being stored there.

The tenants submit that they have been respectful and careful with the landlord's possessions and addressed any concerns about storage of the landlord's possessions when approached by the landlord. As an example the tenants pointed out that the landlord was upset that his stereo speakers had been placed on the concrete floor. In response the tenants placed wooden boards underneath the speakers.

The tenants denied any knowledge that their children were smoking on the roof.

Analysis and Findings

Section 56 of the *Act* states:

- 56** (1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the rental unit.
- (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
- (a) 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, 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.
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I find that the landlord has failed to establish any basis for ending this tenancy early pursuant to section 56 of the *Act*.

I am not persuaded that the landlord's property has been put at any risk. The tenancy agreement fails in any way to identify that the tenants are responsible for the care and storage of the landlord's personal possessions. The tenancy agreement provides no instructions as to what furniture is part of the rental agreement and what items were simply left behind by the landlord to be removed.

I find that most of the valuable items which the landlord expressed concern about are actually personal possessions which he failed to remove before giving occupation and possession of the rental unit to the tenants. This conclusion is supported by the notation in the move out condition inspection that the tenants were to contact the owner to arrange for removal of his "stuff". I find that it is completely unreasonable that the landlord has failed to separate the items or articles that would be part of a tenancy

agreement from his personal possessions and documents. I also find it unreasonable that the landlord now believes the tenants owe him some duty to care for and protect his personal belongings. This is unconscionable and grossly unfair to the tenants, especially when the landlord made claims that some of the collectables in the rental unit are worth thousands of dollars.

I accept the tenants' evidence that the landlord was to remove his belongings before the tenancy began. I accept that there was a verbal agreement to have the landlord's possessions removed from the rental unit, into the garage, so that the landlord could pick them up at his convenience. I find that the tenants have taken reasonable steps to separate furnishings in the rental unit from the landlord's personal possessions. I find it is reasonable that the tenants have placed personal items and possessions of the landlord's into the garage and it is the landlord's sole responsibility to ensure the safety and care of these items. If the landlord is unwilling or unable to remove these items to a more secure and safe storage facility, he does so at this own liability.

The landlord has also failed to provide any evidence to establish the allegation that the tenants' children were on the roof of the rental unit, or smoking, or in any way placed the property at risk. This was based solely on the hearsay comments of the landlord's neighbour and I give it no weight.

Conclusion

I dismiss the landlord's application as it has no merit.

Dated June 08, 2009.

Dispute Resolution Officer