



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord who is seeking an Early End to the Tenancy and an Order of Possession.

Having heard the evidence of the parties and witnesses, under oath, and having given the parties the opportunity to give their evidence orally and to provide written and documentary evidence, to cross-examine the other party and witnesses, and to make submissions to me, I have determined.

Issues(s) to be Decided

Does the landlord have grounds to end the tenancy early?

Background and Evidence

This tenancy began on January 01, 2009. The tenant pays rent of \$508.00 per month for her rental unit on this complex. The landlord holds a security deposit of \$463.50 which the tenant paid on January 01, 2009.

A previous hearing was held on July 06, 2009 when the tenant sought Dispute Resolution to set aside a Notice to End Tenancy. At this hearing the tenants' application was dismissed and the landlord obtained an Order of Possession to take effect on July 31, 2009.

Since that time the landlord has had more concerns about the behaviour of the tenants' spouse who visits her rental unit and the altercations between him and another tenant. Other tenants have become concerned about the behaviour of the tenants spouse and have written letters of complaint to the landlord. The complaints have raised issues such as fighting, swearing, threatening and suspicious behaviour and smoking marijuana on the complex where children are playing. The main incident concerning an altercation between the tenants spouse and another tenant has been documented and has raised conflicting concerns. Accordingly the

landlord has applied for Dispute Resolution seeking an early end to the tenancy and an Order of Possession to take effect sooner than July 31, 2009 as previously ordered.

Both parties called witnesses to describe events concerning the altercation between the tenants spouse and another tenant and I have heard conflicting evidence from the parties pertaining to this event. The tenants' witnesses generally did not see the altercation. One witness who claims to have been present during the argument testifies that it was the other tenant who started the dispute by shouting comments about the tenant losing her tenancy. The witness testifies that the tenant did not join in the ensuing argument but walked away when threatened with bear mace. The tenants spouse gave testimony as a witness and confirmed this tenant's evidence that he did not start the argument. The other tenant was yelling and making snide comments about him being a loser who had lost their house being antagonistic. The witness asked him what his problem was and approached him. The other tenant threatened him with bear mace and the witness states that he walked away

Other witnesses testify that the tenants spouse smokes marijuana on the complex. The tenants spouse does not deny that he does smoke this substance but not on the complex or in front of children playing.

The property manager and the property caretaker both gave evidence and had additional information about the tenants' behaviour towards other tenants and his general behaviour around the complex. Some of this evidence was not given to the tenant due to the time constraints for the hearing but I allowed some of it to be heard due to the relevance at this hearing. The caretaker had received a complaint letter concerning an incident last weekend when a tenant arrived back at her unit and found the tenant's spouse inside. In her letter said she asked him to leave and got angry with him. She did not know how he had got into her unit.

When questioned the tenant and her spouse both testified that the tenants spouse was not at the complex last weekend. They testify that he was at her mothers with their children.

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Additional evidence from witnesses was heard during the hearing but is not significant to the landlords' application for an early end to tenancy as most is hearsay or contradictory evidence.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the parties and witnesses. I find that there is conflicting evidence from both parties pertaining to the events the landlord has described as reasons to end the tenancy early. While much of the evidence is either hearsay or the witnesses perception of events is different, this does not necessarily make them untrue. It appears from the evidence presented during the hearing that there is a lot of animosity within the complex with the tenants involved.

While I do not doubt that there was an altercation between the tenants spouse and another tenant, the burden of proof lies with the landlord to prove that the tenants spouse was to blame. Many of the witnesses gave testimony that they did not actually see the altercation but only the aftermath of this. Consequently, pursuant to s.56 (2) of the Act the landlord has not conclusively proven that 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



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(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,

While I accept that the balance of probabilities suggest that the tenants spouse has acted in an irresponsible manner which is unacceptable to the landlords and has had a negative impact on some of the other tenants living on the complex this does not warrant an Order for an early end to the tenancy. The tenant is responsible for the behaviour of her guests while they are on the residential property. However, the landlord has provided insufficient evidence to constitute an early end to tenancy.

I note that under s. 56(2)(b) of the Act that in order to establish a claim for an early end to tenancy, the landlord must first establish 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. As an Order of Possession has already been granted and served on the tenant to end the tenancy on July 31, 2009, I find that the landlord has not established just cause to bring that date forward and end the tenancy at an earlier date. Therefore, for the above reasons I dismiss the landlords' application.

Conclusion

The landlords' application is dismissed and the tenancy may continue until July 31, 2009 as previously Ordered.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 21, 2009.

Dispute Resolution Officer