

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 hearing dealt with an application by the landlord pursuant to section 56 of the *Residential Tenancy Act*, for an order to end the tenancy early and obtain an order of possession. The landlord also applied for the filing fee.

The landlord testified that she served the tenant with the notice of hearing and application for dispute resolution on September 24, 2009, by registered mail. The landlord provided proof of service and a tracking number. The tenant did not participate in the conference call hearing. I found that the tenant had been served with notice of the landlord's claim and the hearing proceeded in the tenant's absence.

Issues to be Decided

Is the landlord entitled to end the tenancy early?

Background and Evidence

The tenancy started on June 01, 2009 for a fixed term of 12 months. On September 02, 2009, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent and by-law fines. The landlord cited the following reasons for her application for an order for the early end to tenancy:

- Tenant adversely affected security , safety and property of neighbours
- Tenant has cause extraordinary damage and not repaired for over 30 days
- Tenant failed to comply with material term of lease regarding "no pets"
- Tenant refuses entry to the landlord despite 24 hour notice given to tenant
- Tenant's guests and dogs have caused disturbance to neighbours
- Tenant has not paid utilities and fines
- Tenant may be conducting illegal activities on the property.

The landlord also stated that the tenant swore at her and threatened her during a phone conversation and she reported him to the local police. On August 31, 2009 the tenant gave the landlord notice to end tenancy effective September 30, 2009.

Analysis

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.

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” .

Based on the documentary evidence and testimony of the landlord, I am not persuaded that it would be unreasonable or unfair for the landlord to wait while a one month notice to end tenancy takes effect. In addition, the tenant has given the landlord notice to end the tenancy and the landlord’s application was made prior to the effective date of the notice. While the landlord may have cause to end the tenancy, the landlord has not established grounds for an extraordinary remedy such as this. For the above reasons, I dismiss the landlord’s application to end tenancy early.

Conclusion

The landlord’s application is dismissed and she must bear the cost of filing this application.

Dated September 30, 2009.

Dispute Resolution Officer