



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

ET

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Early End to the tenancy and a request for an Order of possession.

The landlord provided affirmed testimony that the notice of this hearing was served to the tenant on October 9, 2009 by posting the notice to the door of the rental unit. The landlord stated that she knocked on the door but the tenant would not answer. The landlord testified that service occurred at 11:30 a.m. with a witness present.

These documents are deemed to have been served in accordance with section 89 of the *Act*, however the tenant did not appear at the hearing.

Issue to be Determined

Has the landlord established the grounds to end this tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

This tenancy began on April 15, 2008. The landlord submitted evidence indicating that the tenant has failed to pay utilities owed, that the tenant has created a dangerous environment, that there has been drinking, fighting and drug use on the property and that the tenant has caused damage to the property. The landlord expressed concern that the neighbours are being bothered by the parties and garbage that the tenant and her guests leave on neighbouring property.

The landlord provided a list of nine police file numbers dating back to June 15, 2008. The landlord was unable to provide any details of the nature of these files but stated that they relate to the tenant. The landlord stated that on October 3, 2009 the police came to the rental unit at midnight and 2:00 a.m. looking for the tenant, resulting in the upstairs tenant being disturbed. The landlord was not able to provide any information for the reasons of this police enquiry. The landlord submitted copies of five letters of complaint from neighbours and one letter of complaint from the current upstairs tenant.

Each of these letters is almost identical in content and indicates that the tenant has late-night parties, that there is fighting, shouting, garbage left on neighbouring property and a general concern for the safety of others.

The landlord testified that at the beginning of September 2009 the tenant's young son discharged bear spray at the rental unit, resulting in the police, fire and ambulance attending at the rental unit.

The landlord testified that the tenant originally lived in the upstairs rental unit and in July 2009 was allowed to move into the basement suite. This move occurred after the landlord had issued a One Month Notice to End Tenancy for Cause. The landlord stated that the tenant had damaged the upstairs rental unit. The landlord stated she did not pursue an Order of possession at that time and allowed the tenant to remain in the rental unit on "humanitarian grounds." During the hearing the landlord stated that the tenant was recently told that if she had been paying her rent on time she could have stayed in the rental unit.

The landlord stated that the tenant's behaviour has been poor throughout this tenancy and that they have an upcoming dispute resolution hearing in relation to unpaid rent.

Analysis

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month Notice to End Tenancy if there is evidence that the tenant has breached their obligation under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy.

The tenant failed to attend this hearing and did not supply any evidence in response to the landlord's submission.

I have considered all of the evidence and testimony provided by the landlord and find that this tenancy will continue. In July 2009 the landlord issued a Notice to End Tenancy for cause and, to date, has not enforced that Notice, allowing the tenant to remain in the rental unit despite on-going concerns with the tenant's behaviour. The landlord was unable to provide any details of the police reports referenced in their evidence; therefore, I am unable to make a determination in relation to those reports and give them little weight. I find that the failure of the landlord to immediately enforce the Notice to End Tenancy, combined with accepting a July 2009 move of the tenant to the downstairs unit, indicates that the landlord intended that this tenancy could continue.

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The landlord has not provided any evidence of specific events since July 2009, which would support an early end to tenancy.

I have taken into consideration the landlord's testimony that the tenant was recently told that if she had paid her rent she would be allowed to remain in the rental unit. This testimony fails to support the landlord's application requesting an early end to the tenancy and suggests that the landlord would not end the tenancy if rent was paid in full.

Next I have considered whether it would be unreasonable or unfair to the landlord to wait for a one month Notice to End Tenancy to take effect. I have accepted that the tenant has caused disturbances and upset neighbours and the upstairs tenant; however, I find that the landlord has allowed this behaviour to continue throughout the term of the tenancy and, while the landlord is at liberty to enforce the Once Month Notice to End Tenancy for Cause, inadequate evidence has been presented to support an Early End to this tenancy. Based on these conclusions I find it would be reasonable to wait for a one month Notice to End Tenancy to take effect. Therefore, I dismiss without leave to reapply, the landlord's application to end this tenancy early.

Conclusion

I have dismissed without leave to reapply the landlord's application to end this tenancy early, pursuant to section 56 of the *Act*.

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: October 22, 2009.

Dispute Resolution Officer