



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

ET and FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, for an early end to the tenancy, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to end this tenancy early, for an Order of Possession and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 56 and 72 of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that the Tenants moved into this rental unit on September 26, 2009.

The Landlord stated that he personally served the female Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on October 02, 2009 and that he posted that Notice on the door on that date. The female Tenant stated that the Landlord did not serve her with a Ten Day Notice to End Tenancy on October 02, 2009 and that the Tenants did not locate a Ten Day Notice to End Tenancy on their door. The female Tenant stated that she did not see the Ten Day Notice to End Tenancy until they received a Dispute Resolution Package and Notice of Hearing for November 25, 2009.

The Landlord stated that he has not served the Tenants with a One Month Notice to End Tenancy for Cause.

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The Landlord stated that he went to the rental unit on October 03, 2009 with his brother, at which time he spoke with the female Tenant and asked for the rent. He stated that she brought her dog to the door; that she told him the dog would bite; and that she would pay the rent when the male Tenant returned home. The female Tenant stated that dog does bark when people come to the door but that she has never threatened the Landlord with her dog.

The Landlord stated that he went to the rental unit on several occasions during the month of October and asked the female Tenant for the outstanding for rent. He stated that the female Tenant swore at him; repeatedly refused to pay rent; and threatened to damage the rental unit. He stated that the female Tenant simply stated that she is going to “damage his property” without specifying the nature of the damage. The Tenant denies uttering such threats and stated that she has not damaged the Landlord’s property.

The Landlord submitted a letter from his brother, in which the brother stated that when he and his brother attempted to collect the rent the Tenants have sworn at them; the Tenants have threatened to damage the rental unit; the Tenants have threatened them with their dog; and the Tenants have changed the locks to the rental unit.

The Landlord submitted a letter from the manager of this residential complex, in which the manager stated that the police have attended at the rental unit on at least two occasions since the beginning of the tenancy; that they are concerned about the number and “character” of the people visiting the rental unit; that the Tenants are storing grocery carts in their carport; that the Tenants have a dog that “seems to be aggressive even with it’s owners”; that the Tenants are noisy; and that they are not sure what is occurring in the rental unit but they are concerned for their personal safety and the safety of their homes.

The female Tenant stated that people do not frequently visit them and that the only guests they have on a regular basis are their two adult sons.

The Landlord and the Tenant agree that the Tenant changed the lock on the rental unit. The female Landlord stated that the Landlord provided them with the lock that they installed. The Landlord stated that he did provide the Tenants with a lock and that he did not ask them to install it.

The Landlord stated that the Tenants will not permit him into the rental unit, although he has never given the Tenants written notification of his intent to enter the rental unit. The female Tenant stated that she will allow him to access the rental unit providing that he provides her with written notice as is required by the *Act*.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 to take effect.

I accept that the Landlord was disturbed by the presence of the Tenants' dog and by the demeanour of the female Tenant when he attended at the rental unit for the purposes of collecting rent. Without determining whether this disturbance would be grounds to end this tenancy early pursuant to section 47 of the *Act*, I find that the disturbance is not sufficient grounds to end the tenancy early. In reaching this conclusion, I am guided by

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section 56(2)(b) of the *Act*, which stipulates that a tenancy should only be ended early if 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 to take effect. In these circumstances, I am not satisfied that it would be unreasonable to expect the Landlord to proceed in accordance with section 47 of the *Act*, as there is no evidence that shows that the dog harmed, or attempted to harm, the Landlord or that the dog poses a real and immediate risk to the Landlord. In reaching this conclusion I was strongly influenced by the female Tenant's testimony that she did not threaten the Landlord with her dog and by the Landlord's testimony that the Tenant advised him her dog would bite, which I do not necessarily interpret as a threat.

Without determining whether verbal threats to damage a Landlord's property would be grounds to end this tenancy early pursuant to section 47 of the *Act*, I find that the threats that the Landlord alleges were made are not sufficient grounds to end the tenancy early. In reaching this conclusion, I am guided by section 56(2)(b) of the *Act*, which stipulates that a tenancy should only be ended early if 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 to take effect. In these circumstances, I am not satisfied that it would be unreasonable to expect the Landlord to proceed in accordance with section 47 of the *Act*, as there is no evidence that shows that the Tenants have harmed the Landlord's property; the female Tenant has denied threatening the Landlord's property; the female Tenant has denied damaging the Landlord's property; and by the Landlord's testimony that the Tenant did not make specific threats regarding the nature of the damage that she would cause.

I find that the letter written by the manager of the residential complex is not sufficient grounds to end this tenancy pursuant to section 56 of the *Act*. Although I accept that the manager and other occupants of the residential complex have concerns about the Tenants, I find that there is insufficient evidence to conclude that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; that the Tenants have seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; that the Tenants have put the Landlord's property at significant risk; that the Tenants have engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; that the Tenants have engaged in illegal activity that 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; that the Tenants are likely to jeopardize a lawful right or interest of another occupant or the landlord; or that the Tenants have caused extraordinary damage to the residential property. In reaching this conclusion, I was strongly influenced by the absence of evidence to corroborate the manager's concerns that the Tenants or their guests are engaged in illegal or unsafe behaviour within the residential complex, with the exception of being in possession of shopping carts which presumably do not belong to them; by the absence of evidence that the Tenant's dog

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has harmed anyone or caused any damage; by the absence of evidence that would indicate that the author's concern for her personal safety and for the safety of the homes in the residential complex is warranted; by the absence of evidence that establishes why the police were at the residential complex; and by the absence of details regarding the volume and frequency of the noise that is allegedly disturbing the occupants living below the Tenants.

I find that changing the locks without authority is not cause to end a tenancy early pursuant to section 56(2)(a) of the *Act*. On this basis, I will not be considering the evidence regarding the lock when rendering a decision on this matter.

I find that requiring that a Landlord to comply with the *Act* when the Landlord wishes to access to the rental unit is not cause to end a tenancy early pursuant to section 56(2)(a) of the *Act*. On this basis, I will not be considering the evidence regarding access to the rental unit when rendering a decision on this matter.

Conclusion

I find that the Landlord has not established grounds to end this tenancy early, pursuant to section 56 of the *Act*. On this basis I hereby dismiss the Landlord's application to end the tenancy early and for an Order of Possession. The parties were advised of my decision at the end of the hearing, at which point the Landlord expressed his disagreement with my decision; he declared that I did not have the authority to render this decision; and he threatened to physically remove the Tenants from the rental unit. After being advised on three occasions that the hearing was concluded, the teleconference was terminated while the Landlord was still expressing his dissatisfaction with my decision.

As the Landlord's application has been without merit, I hereby dismiss their application for compensation to recover the filing fee for the cost of this Application for Dispute Resolution.

The Landlord and the Tenant are both advised that this decision has no bearing on the dispute resolution hearing that is scheduled for November 25, 2009. The hearing on November 25, 2009 has been scheduled to consider the issue of unpaid rent, which was not the subject of this hearing.

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: November 03, 2009.

Dispute Resolution Officer