

Dispute Codes:

OPC, ET, FF

Introduction

This is the Landlords' application for an Order of Possession for Cause, to end the tenancy early and obtain an Order of Possession; and to recover the cost of the filing fee from the Tenants.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Preliminary Issue

The Landlords have applied to end the tenancy early, which is an expedited process used when the circumstances surrounding the tenancy are so significant that an Order of Possession can be granted without the necessity of serving a tenant with a Notice to End Tenancy. For this reason, an application to end a tenancy early is not to be mixed with applications for monetary orders, or applications for Orders of Possession under other sections of the Act. I therefore decline to consider the Landlords' application for an Order of Possession for Cause, and it is dismissed with leave to reapply.

Issues to be Decided

- Are the Landlords entitled to end the tenancy early and obtain an Order of Possession?
- Are the Landlords entitled to recover the cost of the filing fee from the Tenants?

Background and Evidence

The Landlords gave the following testimony:

The Landlords have received complaints from other tenants in the rental property regarding lots of people coming and going from the Tenants' suite at all hours.

The Landlords gave the Tenants 24 hours notice to inspect the rental unit, but when they attended the Tenants' suite, the Tenants would not let them in.

On October 18, 2009, the Landlords found hypodermic needles in the area the Tenants use for disposing of garbage. The Landlords allege that the Tenants are drug users and are concerned that their drug use, together with the improper disposal of the used needles, poses a health risk to other tenants in the building and their children. The Landlords know that it was the Respondents/Tenants who disposed of the needles because the other tenants have alternate areas for disposing of garbage. The Landlords testified that they called the police when they found the used needles, who attended at the rental property.

The Landlords allege that the female Tenant is a prostitute. The Landlords provided a copy of a newspaper ad in evidence, advertising for the services of an “attractive, friendly and drug free” woman who provides “in/out calls”. The ad provides a telephone number, which the Landlords called. The Landlords testified that they recognized the voice of the person who answered to be the voice of the female Tenant.

The Landlords testified that the Tenants have 4 dogs and some cats living at the rental unit, in contravention of the tenancy agreement.

The Tenants gave the following testimony:

The Tenants testified that on the day the Landlords wanted to inspect the Tenants’ suite, the female Tenant was having a birthday party and therefore it was not convenient for the Landlords to inspect the rental unit on that day.

The Tenants testified that their dog had pulled a bag of needles out of the insulation in a common storage area in the downstairs area of the rental property. The Tenants called the health department, who removed the “sharps” and disposed of them in an appropriate box.

The female Tenant testified that the newspaper ad was hers, but that she did not see clients at the rental unit because of her children. The Tenants testified that the

telephone numbers listed in the ad are different telephone numbers than the Tenants' phone number at the rental unit.

The Tenants denied having 4 dogs, and stated that they have had visitors who brought their dogs with them to the rental unit. The Tenants denied having numerous visitors at all hours.

The Tenants testified that they consent to move out, but wanted more time in order to find alternate accommodation, and asked the Landlords to consider giving them a couple of months to do so.

The Landlords gave the following reply to the Tenants' submissions

The Landlords were not prepared to give the Tenants more time to move out.

The Landlords stated that the police officer who attended on October 18th could provide testimony and asked that I call her at the number they provided in evidence.

Analysis

I attempted to contact the police officer to give testimony, but she was not working at the time of the Hearing.

This is the Landlords' application and the onus is on the Landlords to prove their claims. There were no written statements from other tenants, or the police, provided in evidence. There were no witnesses available to give verbal testimony at the Hearing.

In order to end a tenancy under Section 56(2) of the Act, the Landlords have to establish that the Tenants or a person permitted on the property by the Tenants have:

- (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.

The Tenants admitted that the female Tenant was the person who placed the newspaper ad. However, the female Tenant testified that she did not provide services at the rental unit. I confirmed that the phone number that the Landlords provided on their application is not listed in the ad. In order for this to be considered an illegal activity which justifies ending the tenancy, the illegal activity must have some effect on the tenancy, i.e. it must have occurred in the rental unit or on the residential property.

Based on the testimony and evidence provided by the parties, I am not satisfied that the Tenants, or a person permitted on the rental property by the Tenants, have done any of the things required under Section 56 in order to end the tenancy early. Therefore, the Landlords' application for an early end of tenancy and an Order of Possession is dismissed without leave to reapply.

The Landlords have not been successful in their application and are not entitled to recover the cost of the filing fee from the Tenants.

Conclusion

The Landlords' applications for an early end of tenancy and to recover the cost of the filing fee from the Tenants are dismissed without leave to reapply.

The Landlords' application for an Order of Possession for Cause is dismissed with leave to reapply.

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 10, 2009.
