



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

ET, 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 early end of the tenancy and an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony provided.

Preliminary Matter

At the start of the hearing the tenant's witnesses were present. Each was excused until required to provide testimony. The tenant called only one of his two witnesses to testify.

At approximately the mid-point of the hearing the tenant's advocate stated that she felt the tenant had not been provided with adequate time to prepare for this hearing. I have determined that the tenant has been provided with ample time to submit evidence and had, as required by Residential Tenancy Branch Rules of Procedure, at least two days prior to this hearing in which to submit evidence.

The tenant stated that he has submitted an Application for Dispute Resolution disputing a One Month Notice to End Tenancy for Cause that he received on November 24, 2009. The tenant stated he had submitted evidence for his upcoming hearing and had placed the file number for this hearing on his evidence; however, there is no evidence before me from either party.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced in 2003 for rental of a basement suite. Rent is \$500.00 per month. The landlord resides in the upper portion of the house. There is no written tenancy agreement.

The landlord provided the following reasons as to why an early end of tenancy is required:

- The suite is uninhabitable;
- Sewage has backed up and flooding;
- Tenant refuses to vacate so that restoration work on the unit may be completed;
- Tenant is refusing access to the rental unit by the landlord;
- Tenant assaulted the landlord on November 26, 2009;
- Tenant has a known criminal living in the suite and refuses to move this person out.

The landlord testified that a conflict arose as the result of a sewer backup which occurred in the tenant's suite on November 18, 2009. The landlord stated that she entered the rental unit on November 19 in the company of an insurance adjuster and a restoration specialist and found the extent of the damage shocking. The landlord stated that the suite contained a mountain of paper, furniture and electronic equipment and that she determined it was a "fire trap."

The landlord stated that on November 19, 2009 she and the tenant reached a mutual verbal agreement that the tenant would vacate the rental unit on November 26, 2009 so that repairs could be easily completed, but that on November 20, 2009 the tenant rescinded this agreement and refused to vacate. The landlord stated that she had expected the tenant to remove his belongings and stay elsewhere for up to two months. The landlord stated that the tenant asked about compensation and that she denied this request as the tenant had previously been advised to obtain his own tenant insurance.

The tenant stated that after telling the landlord that he would not move out the landlord came to his rental suite door very upset. The tenant's witness testified that he was on the telephone with the tenant and could hear the landlord yelling, swearing and shouting

at the tenant. The witness stated that he thought the landlord was bullying the tenant. The landlord stated that she did go to the tenants unit and was upset at the time.

The tenant's witness testified that he has been to the rental unit on many occasions, that he was aware of prior floods and that the landlord understood that the flooding problem was due to old clay pipes which required replacement. The witness stated that the rental unit had remained habitable after prior floods had occurred.

The landlord testified that on November 26, 2009 she attempted to enter the suite on the basis of a written notice given to the tenant and was accompanied by her spouse and an insurance adjuster. The landlord stated that tenant refused her entry and that she called the police who advised them to leave the unit. The landlord stated that as they exited through a common hallway she touched the tenant's ladder and told him that it would have to be removed and that at this point the tenant became enraged and assaulted her by pushing her. The police attended and spoke with the tenant.

The landlord and her spouse confirmed that the insurance adjuster witnessed the alleged assault; however the adjuster was not asked to attend this hearing as a witness.

The landlord's spouse testified that on November 26 he was present and called 911 who directed him to the non-emergency phone number to report the alleged altercation between his wife and the tenant. The landlord's spouse stated that the tenant pushed his wife at least three times and shoved her out of the hallway and that as this occurred he was providing the police operator a verbal report of what he was witnessing.

On November 30, 2009 the landlord provided the tenant with another notice to enter the suite on December 1, 2009. The landlord testified that the tenant had placed a note on the door refusing the landlord entry without police presence. The landlord stated that the police were called and could not attend.

The landlord described further problems with access to the suite and that on December 3, 2009 the police agreed to attend the rental unit to assist with an inspection. The landlord stated that the suite is no longer wet and has dried out.

The tenant testified that landlord had wanted to remove his belongings from the rental unit and that he was willing to have the insurance adjuster and the landlord's spouse attend at the unit, but not the landlord. The tenant stated that there is a common hallway by the entrance to his unit and that the landlord's spouse and the insurance adjuster had exited when the landlord grabbed the tenant's ladder saying that it would have to be immediately put outside. The tenant stated he felt the landlord was goading him and that a "scuffle" over the ladder ensued. The tenant stated he grabbed the ladder, that the landlord would not let go and that he may have unintentionally struck the landlord as they were in a narrow hallway. The tenant denied any intentional assault of the landlord and testified that he felt the landlord was being provocative. The tenant stated he has been shocked by the sudden deterioration of their relationship.

The landlord stated that she only touched the ladder and that the tenant then started screaming and shoving her. The landlord stated she is now afraid of the tenant.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that she has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord and her witness, I find that the landlord has not met that burden.

I find, based upon the landlord's testimony, that the unit is now dry and continues to be habitable. If the rental unit was uninhabitable this tenancy may have been frustrated, but this would not form the basis for ending a tenancy early.

The claim there has been a sewage back-up is disputed by the tenant, who stated that it was water only. The landlord has confirmed that the suite is no longer wet; therefore, there is no immediate need for the tenant to vacate.

I find that the parties have, up until the flood on November 19, 2009, had a good relationship. Once the tenant refused to voluntarily move out the relationship deteriorated and the landlord became frustrated. At this point I find that the landlord provoked the tenant by attending at his rental unit, yelling and making unreasonable demands that he leave.

The tenant did allow the landlord's spouse and the insurance adjuster into the rental unit, but felt that the landlord had threatened to remove his belongings and that she was, therefore, not welcome in his unit. The landlord had an interest in accessing the rental unit to assess damages, but the landlord was at liberty to allow her spouse and the adjuster to complete the inspection; thus eliminating any potential jeopardy to her lawful right or interest. I find that the tenant's decision to deny the landlord access was reasonable in the circumstances and not grounds to end this tenancy early.

There is no evidence before me that the tenant has a known criminal residing with him. Even if the tenant has an individual living with him who engages in criminal activity the landlord has the burden of proving that the second occupant is creating cause for ending the tenancy early. I have no evidence before me that this is the case.

Finally, I have considered the matter of the alleged assault. Both parties agree that some sort of altercation occurred on November 26, 2009. The landlord alleges an assault, the tenant states that the landlord provoked him and that they had a scuffle over the tenant's ladder. The attendance of the police does not confirm that an assault occurred and I am not required to determine if a breach of the *Criminal Code of Canada* has occurred. I have considered whether this altercation seriously jeopardized the landlord's lawful right, safety or security. I find that this was an isolated incident brought

on by the landlord's insistence that she enter the tenant's suite at a time when the landlord should have known the tenant was feeling threatened due to her insistence that he move out of the rental unit, in contravention of the Act and the subsequent issuance of a Notice to End Tenancy on November 24, 2009. I have also made this finding based upon the landlord spouse's testimony that he witnessed the assault while reporting the incident to the police on the telephone. The absence of any intervention by the landlord's spouse leads me to believe that the altercation was not significant. I also base this decision on the tenant's testimony acknowledging an altercation and the deterioration of the relationship as a result of the landlord's demands that the tenant move out.

In the circumstances before me, taking into account the testimony of both parties and the witnesses, I find that it would not be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47 of the Act. Therefore; I find that the landlord is not entitled to an order for possession.

The parties will have an opportunity to submit evidence and provide testimony at the tenant's upcoming hearing to dispute a Notice to End Tenancy for Cause issued by the landlord on November 24, 2009.

Conclusion

The landlord's application requesting an early end to this tenancy is denied. The tenancy shall continue.

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: December 11, 2009.

Dispute Resolution Officer