

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession to end the tenancy early.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession and to end the tenancy early and to a monetary Order to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 55, 56, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A copy of a tenancy agreement signed by both parties on November 3, 2008 for a month to month tenancy beginning November 3, 2008 for a monthly rent of \$850.00 per month, a security deposit was paid of \$425.00 was paid but no pet damage deposit was paid;
- A letter from the landlord's physician dated December 29, 2009 indicating she must be off work for the duration of her pregnancy;
- A letter dated January 11, 2009 from the landlords warning the tenants to stop smoking marihuana on the property; contain foul odours to their own rental unit; repair damages made by animals; remove all storage, junk and garbage; clean up animal feces, rabbit scraps and cigarette butts; pay all bills and rent by the 1st of the month; and remove dog immediately – in the hearing the landlord stated the date for this letter should have been January 11, 2010.
- A letter dated January 22, 2009 asking the tenants to stop smoking marihuana; noting agreement two having two cats; asking to keep common areas free of animal feces, litter and butts;
- A copy of a Condition Inspection Report dated November 3, 2008 showing the condition at move in;
- Several photographs of the rental unit empty and a recent series of photographs showing the current condition; and
- A letter dated January 19, 2010 from the local RCMP to the landlord confirming the RCMP's attendance at the dispute address on January 13, 2010 at 8:45 p.m.

regarding a complaint about the odour of cannabis marihuana. The letter further states the officers confirmed with the “tenants the reason for such odours however failed to substantiate any recent use of the material outlined”.

The landlord provided testimony that the tenants’ dog had caused damage to the front yard of the property; that the tenants are smoking marihuana in the rental unit which she believes is harmful to her and her unborn child; and that the rental unit is ruined because of the lack of care and the pets the tenants have in the rental unit.

The landlord confirmed the property has 3 bedrooms upstairs where she lives and the rental unit has 2 small bedrooms a large living room and a combination of carpets and laminate flooring. She further states the property uses a forced air gas heating system.

The tenants provided testimony denying the use of marihuana in the rental unit; alleging all the damage to the property was there at the start of the tenancy; that the landlord knew about the dog for over a year. The female tenant testified that she could send the dog to her parents but they needed to build a fence first and would start in the spring. She also stated that she plans on moving out but has not yet secured a new place.

The male tenant testified that he is trying to clean up the litter but that he has not yet cleaned up the carport. Neither tenant provided an explanation as to why they had not yet followed up on any of the requests of the landlord from the letter dated January 11, 2009.

Analysis

Section 56 of the *Act* allows a landlord to request, via an Application for Dispute Resolution, to end a tenancy earlier than the tenancy would end if notice to end the tenancy were given under Section 47.

In order to grant an order to end a tenancy in this manner, the onus is on the landlord to prove that it would be unreasonable or unfair to the landlord to wait for a notice to end the tenancy under Section 47.

The primary concern submitted by the landlord is the tenants’ use of marihuana in the rental unit with the smell spreading to the landlord’s unit. The landlord contends that this is harmful to herself and her unborn child.

The landlord has provided no medical documentation confirming any harm or potential harm from indirect exposure. Nor has the landlord provided any evidence to confirm that any hazardous impacts from marihuana smoke are transmitted between the two units.

The use of marihuana in the rental unit is denied by the tenant and even the letter from the local RCMP does not confirmed that marihuana has been used in the rental unit.

As to the other issues raised by the landlord in her submission and testimony such as: repeated late payment of rent; damages caused to the rental unit and property; and having a dog in the rental property despite the landlord's request to have the dog removed, the landlord has again failed to show how it would be unfair to the landlord to wait for a notice to end under Section 47.

Conclusion

For the reasons above, I dismiss the landlord's application to end the tenancy early, however, the tenants must consider they have now received sufficient warning to correct the behaviour or the landlord may issue a 1 Month Notice to End Tenancy for Cause, as per Section 47 of the *Act*.

As the landlord was unsuccessful in her Application, I dismiss her claim to recover the filing fee for this proceeding.

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: January 20, 2010.

Dispute Resolution Officer