

## Decision

**Dispute Codes:** ET, FF

### **Introduction**

This is the Landlord's application for an early end to tenancy and an Order of Possession pursuant to the provisions of Section 56 of the *Residential Tenancy Act* (the "Act"); and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the Landlord prior to the Hearing. All of the parties gave affirmed testimony and this matter proceeded on its merits.

### **Issue(s) to be Decided**

- (1) Would it 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 of the Act to take effect?
- (2) Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

### **Background and Evidence**

#### Landlord's agent's and Owner's testimony

The Owner served the Tenant with the Notice of Hearing Documents on January 6, 2010, at 6:00 p.m. by posting the document on the Tenant's door.

On December 16, 2009, the Landlord issued and served a Notice to End Tenancy for Cause, effective January 31, 2010. The Tenant has not disputed the Notice and has agreed to move out of the rental unit on January 31, 2010.

Since providing the Tenant with the Notice to End Tenancy for Cause, there have been other challenges with the Tenant. Other tenants are threatening to move out of the rental property because of the actions of the Tenant.

On January 6, 2010, the Tenant jumped over a granite wall and on to the Owner's driveway. The Owner asked the Tenant to use the roadway because there would be no insurance if the Tenant fell on the slippery, frozen driveway. The Tenant threatened the Owner and said there would be "problems next week". Police were called. Police have been called to the rental unit three times since December 19, 2009, but the Landlord has not been able to access the police reports in order to provide written documentation in evidence.

The Tenant told the Owner that he had been charged with attempted murder of his father-in-law.

On January 6, 2010, at 1:30 a.m., the Tenant started banging cupboards and kicked the door of his neighbour's suite.

The Tenant has refused to allow the alarm maintenance company access to his suite in order to install fire alarm upgrades.

The Tenant is smoking in his suite, which is a violation of the tenancy agreement. The Tenant leaves his patio door open, which is costing the Landlord for excess electricity. Utilities are included in the monthly rent.

#### Landlord's Witness's testimony

The Witness is the Tenant's immediate neighbour. The electrical control panel for the rental property is contained in the Witness's suite. On December 18, 2009, the Tenant was playing loud music after midnight. The Witness testified that he turned off all of the power to rental property after speaking to the Owner. Later in his testimony, the

Witness testified that he turned off only the 15 amp fuses, and it was on his own volition because the Tenant was making so much noise. The Tenant pounded on the Witness's door a couple of dozen times, and kicked the wall between the two rental units.

#### Tenant's and the Tenant's advocate's testimony

The Tenant suggested that it was the Owner, and not the Witness, who turned off the Tenant's power. The Tenant called the police, who came to the rental property and were successful in getting the power returned to the Tenant's suite.

The Tenant stated that the Owner was exaggerating the size of the granite wall, which the Tenant testified was actually a short retaining wall. The Tenant denied ever being charged with attempted murder or uttering threats to the Owner.

The Tenant's advocate stated that he was able to get a copy of one of the police reports. The Tenant was spooked because there was someone in his apartment. It turned out to be a man from the alarm company.

The Landlord advised the Tenant in November, 2009, that someone would be coming in a week or so, but no further communication was given to the Tenant. The Tenant did not get 24 hours written notice of the alarm company's access.

The Tenant quit smoking and believes someone may have seen him with a Nicorette inhaler.

The walls in the rental property are not soundproof. Sometimes the Witness snores so loudly that the Tenant has to leave his TV on to drown out the sound, in order to get some sleep. The Tenant denies kicking the Witness's door. The Tenant admitted pounding on the wall once in frustration because the Witness had turned off the power to the Tenant's suite.

## **Analysis**

This is the Landlord's application and as such, the onus is on the Landlord to prove its claim. The Landlord's Witness's testimony was inconsistent. The Owner stated that he was not able to obtain a copy of the police reports due to time restrictions, but the Tenant's advocate testified that he had a copy of the report from one of the incidents. The Landlord's agent testified that other tenants were threatening to move out of the rental property, but no documentary evidence was entered to substantiate that claim (i.e. letters from other tenants).

The Owner testified that the Tenant refused access to the alarm company to install upgrades to the fire alarms and therefore put his property at risk. The Tenant testified that the Landlord did not provide him with 24 hours written notice of the access, and he was unaware who the strange man was in his home when he returned from being away for a brief period of time. The Landlord's agent and the Owner did not dispute that they had not provided due notice to the Tenant.

Section 56 of the Act states:

### **Application for order ending tenancy early**

- 56** (1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
  - (b) granting the landlord an order of possession in respect of the rental unit.
- (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
    - (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**  
(emphasis added)

**(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.**

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The Tenant has not disputed the Landlord's Notice to End Tenancy for Cause issued December 16, 2009. I do not find that it would be unreasonable or unfair to the Landlord or other occupants of the residential property to wait for the Notice to End Tenancy issued December 16, 2009, to take effect. The Landlord's application is therefore dismissed in its entirety.

### **Conclusion**

The Landlord's application is dismissed without 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.

January 25, 2010

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Date of Decision