



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ET, FF

Introduction

The landlord has submitted an Application for Dispute Resolution for an order of possession to end the tenancy early.

The hearing was held by teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the landlord testified that he has issued a 1 Month to End Tenancy for Cause on January 16, 2010 with an effective date of February 16, 2010. He noted that he was also aware that the effective date is corrected to February 28, 2010.

He further testified that he issued a 10 Day Notice to End Tenancy for Unpaid Rent on January 16, 2010 and that the tenant provided him a cheque on January 22, 2010 but the tenant later put a stop payment on the cheque.

Both of these issues are not considered in this hearing as they were not part of the landlord's original application.

Issues(s) to be Decided

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

Background and Evidence

The tenancy began in September 1994 as a month to month tenancy for a current monthly rent of \$468.00 due on the 1st of the month.

The landlord submitted the following documents into evidence:

- A copy of a completed police department statement form dated January 13, 2010 from a neighbour tenant regarding an incident with the respondent tenant;

- A copy of a document entitled "Attachment" dated January 26, 2010 listing a number of behaviours attributed to the respondent tenant and signed by a number of other tenants indicating what behaviours they believe the tenancy should end early for;
- A copy of a letter from a 3rd floor resident to the landlord regarding an incident on March 29, 2009 between himself and the respondent tenant;
- A copy of a letter from another resident in the building who requires a scooter regarding restrictions on storage of her scooter and stating the respondent tenant threatened her on many occasions in October, no year is stated;
- A letter dated November 27, 2008 from a resident in the rental unit above the respondent tenant regarding incidents during here tenancy;
- A handwritten note from another resident dated March 2009 listing examples of the respondent tenant's behaviour cause concerns for some residents; and
- 8 photographs showing the lobby, stairwell and basement of the residential property.

The landlord recounted the events as outlined in the police statement. The landlord also stated the neighbour tenant has been staying at a friend's from time to time and is having difficulty sleeping, as a result of the altercation between herself and the respondent tenant.

The account of the incident is that the neighbour tenant was sitting on a couch in the lobby when the respondent tenant came in and started yelling at her and eventually the respondent tenant dumped her on the floor. The neighbour tenant went outside to calm down and have a cigarette and the respondent tenant continued to harass her and grabbed her shoulder and put his hand on her mouth.

The tenant testified that it had been the neighbour tenant who had been causing a disturbance and he simply went out and asked her to stop tapping on the floor and loitering in the lobby.

The landlord submitted that the neighbour tenant had called to police on January 15, 2009 and a loud noise came from the respondent tenant's unit. The police attended and arrested the respondent tenant. The respondent tenant's testimony is that the police beat him up for no reason and he was taken away.

Analysis

Section 56 of the *Act* allows a landlord to apply to end a tenancy earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (a 1 Month Notice).

Section 56 requires the landlord to prove the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or has seriously jeopardized the health or safety or a lawful interest of the landlord or another occupant, or put the

landlord's property at significant risk. The section also requires the landlord to show that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a notice under Section 47 to take effect.

The issues outlined by the landlord for the most part are longstanding issues dating back several years in the tenancy, as such I find that although they may be considered as cause to end a tenancy there is no evidence provided that supports the test that it would be unreasonable for the landlord or other occupants of the residential property to wait until a notice period is served.

As both parties dispute the events of January 13, 2010 and in the absence of any witnesses or corroborating evidence to the events or the impact it has had on the neighbour tenant or other residents of the property, I find the landlord has failed to show it would be unfair to wait through the notice period as required under Section 47 of the *Act*.

Conclusion

Based on the above findings, I dismiss the landlord's application to end the tenancy early, pursuant to Section 56, 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: February 05, 2010.

Dispute Resolution Officer