

## **DECISION**

Dispute Codes      ET FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to Obtain an Order of Possession to end the tenancy early, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 2, 2010. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant confirmed receipt of the hearing package.

Two representatives attended for the Landlord and the Tenant (1), appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession to end the tenancy early under section 56 of the *Residential Tenancy Act*?

### Background and Evidence

The fixed term tenancy agreement began on June 1, 2009 and switched over to a month to month tenancy after December 31, 2009. Rent is payable on the first of each month in the amount of \$1,000.00 and a security deposit of \$500.00 was paid by the Tenant on May 5, 2009.

The Tenant confirmed that the second name listed on the Landlord's application for dispute resolution is a roommate to the Tenant. The Tenant argued that another female was also residing with him since his girlfriend moved out and that these three Tenants signed a new tenancy agreement with the Landlord.

The Landlord argued that no new tenancy agreement was entered into however the Landlords are aware that the second person named on the Landlord's application for dispute resolution resides in the rental unit with the Tenant.

The Landlord testified that they are seeking an immediate Order of Possession because the Tenant continues to run an extension cord from his rental unit into the hallway and is stealing power. The Landlord argued that the Tenant is putting the other tenant's health and safety at significant risk by creating a tripping hazard with the extension cord strung across the hallway during the night.

The Landlord testified that the Tenant has been served with two notices to stop running the extension cord into the hallway one on January 11, 2010 and another on January 28, 2010.

The Director of Operations for the Landlord testified that she personally witnessed the extension cord running from the Tenant's rental unit to the electrical outlet in the hallway on January 31, 2010, after he was given two notices to stop doing this. The Director of Operations also stated that after they were without power one evening they determined that a breaker was blown on the Tenant's side of the building and while they cannot prove that this outage is directly related to the Tenant's actions, they suspect that it was.

The Tenant testified and confirmed that he did run the extension cord to the outlet in the hallway for three days in December 2009 when his power was shut off after his girlfriend moved out. The Tenant argued that he has not continued to run the power cords and that he did not receive the alleged notices posted to his door.

The Landlord argued that the Tenant has acquired a Pit Bull which is a health and safety risk to his employees as they are afraid to enter the rental unit. The Landlord claims that the Tenant refused to allow maintenance staff and the resident manager access to the rental unit. The Landlord confirmed that they have not posted notices to enter because of their fear of the dog.

The Tenant confirmed that his brother is his guest during the Olympics and his brother has brought his dog, a pit bull, to stay with him for a few weeks. The Tenant argued that he did have authorization to have a dog because he had one when him and his girlfriend first moved into the building, so his tenancy agreement should show they are allowed a dog. The Tenant also argued that the maintenance person has been in his apartment since the dog's arrival and he has never refused the Landlord access to the rental unit.

The Tenant argued that he was not able to provide evidence in support of his defence as he only received the notice of hearing on Friday February 12, 2010.

When asked why the photos show a date of 01/19/2010 if the Tenant has not run the cord since December, the Tenant replied stating that the tenant who took these photos does not like him and he suspects that this tenant altered the date on his camera.

### Analysis

In making an application for an early end to this tenancy the Landlord has the burden of proving that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord and placing the landlord's property at significant risk, and by proving that it would be unreasonable or unfair to the Landlord or other occupants to wait for a one month Notice to End Tenancy for cause under section 47 of the *Act* to take effect.

I am not satisfied that the Landlord has met the burden of showing that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. I am satisfied that there may be cause to end this tenancy pursuant to section 47 of the *Act*; however, I do not find it is unfair or unreasonable for a one month Notice to End Tenancy to take effect.

I make this finding for several reasons. First of all, I am satisfied that the Tenant has not seriously jeopardized the health and safety of the Landlord or other occupants in a manner that requires an immediate end to a tenancy. That being said I am satisfied that the Tenant has or is continuing to run an extension cord from his rental unit across the hallway and into an electrical outlet and this extension cord may create a tripping hazard however it is not such a significant risk as to warrant the immediate end to the tenancy.

I also find that the Tenant's breach of housing a dog in his rental unit is not so significant as to warrant an early end to the tenancy. While the testimony supports that the Tenant has a pit bull in his rental unit, there is no evidence to substantiate that this dog has put anyone's safety or health at risk. While employees of the Landlord may have a fear of a dog of the pit bull breed there is no proof before me that the Landlord's access to the rental unit has been restricted. I note that the *Act* requires that the Landlord must provide reasonable reasons for accessing the rental unit and the Landlord did not provide any reasons with his notice. While it can certainly be argued that allowing a dog into the rental unit is a breach of the terms of the tenancy I am not satisfied that this breach is so significant as to warrant the immediate end of the tenancy. At the time of the hearing I find that there was insufficient evidence to support the allegation that the Landlord's property or the health and safety of the Landlord and the other tenants are at significant risk.

The Landlord may well be able to show that there are grounds to end this tenancy pursuant to section 47 of the *Act* after service of a one month's Notice to End Tenancy;

however, I am not satisfied that the circumstances warrant an early end to the tenancy, therefore I dismiss the Landlord's application .

As the Landlord has not been successful with their application I decline to award the Landlord recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application, 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*.

Dated: February 15, 2010.

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Dispute Resolution Officer