



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's request for an early end of tenancy and Order of Possession. Both parties appeared at the hearing and were provided the opportunity to be heard.

Issues(s) to be Decided

1. Has the landlord established that the tenancy must be ended sooner than the effective date of a *1 Month Notice to End Tenancy for Cause*?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

I heard undisputed testimony as follows. The tenancy commenced July 1, 2009 for a fixed term set to expire September 30, 2009. At the end of the tenancy, the parties verbally agreed to continue the tenancy on a month-to-month basis. On January 11, 2010 the landlord serve the tenants with a *1 Month Notice to End Tenancy for Cause* (the Notice). The Notice has an effective date of February 28, 2010.

The landlord seeks an early end of tenancy on the following grounds:

- The tenants frequently fight and disturb other occupants;
- The male tenant has been observed and is the subject of numerous complaints about being passed out in the hallway by the laundry room and the stairwell;

- While in the hallway the tenant smokes and has caused numerous burn holes in the carpeting;
- The landlord is concerned the male tenant is going to cause a fire from smoking in the hallway while intoxicated and the landlord is highly concerned for the safety of the other occupants in the building.

Upon enquiry, the landlord stated that the tenants' behaviour has continued since the Notice to End Tenancy was issued. The landlord explained that complaints from other occupants continue to be received and the cleaning personnel have reported additional burn holes in the carpet by the laundry room. The landlord submitted that there are currently 36 burn holes in the hallway carpet. The landlord testified that the tenants have been warned about the smoking in the hallway in writing and by verbal conversations.

The tenants acknowledge that they have issues with alcohol and that the male tenant smokes; however, it was the tenants' position that the landlord cannot prove it was the male tenant responsible for causing the burn holes in the carpet. The tenants claim other residents smoke in the building as well. The tenants also pointed out that the landlord has blocked out the identity of the complaint letters submitted as evidence so the tenants do not know who is making the complaints.

The landlord refuted the tenants' position by stating that the manager had to assist the male tenant back to his unit with the aid of another man because the tenant was so intoxicated and that three separate tenants have made complaints about the male tenant passing out in the hallway and stairwell. The landlord described one occasion where the police were called and the male tenant was taken away by the police. Initially, the male tenant denied he had been taken away by the police but then changed his testimony to confirm he had been. The male tenant had a difficult time trying to remember and describe why he was taken away by the police.

As evidence for the hearing, the landlord provided a copy of a statement of the manager, a warning letter from the regional manager, written complaints from other occupants, and photographs of numerous burn holes in the hallway carpeting.

Analysis

Section 56 of the Act provides that a landlord may make an application to end a tenancy early and request an Order of Possession if, among other things, the tenant has

- (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;

and 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 for cause to take effect.

Since the landlord has issued a *1 Month Notice to End Tenancy for Cause* with an effective date of February 28, 2010 which has not been disputed by the tenants, I find the landlord has the burden to prove that it is unreasonable to wait until February 28, 2010 to end this tenancy in order to protect the health and safety of the other occupants, the other tenant's right to quiet enjoyment or the landlord's property from significant risk.

The burden of prove to show the tenancy must end early is upon the landlord. The burden of proof is based on a balance of probabilities, which means that I must find it more likely than not that the events occurred as described by the landlord. The burden is not as great as the criminal standard, which is beyond a reasonable doubt.

Having heard from both parties, and upon consideration of all of the evidence before me, I find that on the balance of probabilities, the male tenant has been smoking in the common areas without sufficient care and control of his cigarettes due to intoxication and that this behaviour has put the landlord's property and the health and safety of the other occupants at significant risk.

I find the landlord has satisfied me that the tenancy should end before the effective date on the *1 Month Notice to End Tenancy for Cause* and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants. The Order of Possession may be enforced in The Supreme Court of British Columbia as an order of that court.

The landlord is awarded the filing fee and is authorized to deduct \$50.00 from the tenants' security deposit in satisfaction of this award.

Conclusion

The tenancy shall end and an Order of Possession has been provided effective two days after service of the Order upon the tenants. The landlord may deduct \$50.00 from the tenants' security deposit for the cost of making this application.

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 16, 2010.

Dispute Resolution Officer