

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution to end a tenancy early.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

At the onset of the hearing the tenant indicated that he had submitted some documentary evidence to both the landlord and the Residential Tenancy Branch. The landlord confirmed that he had received this documentation; I did not receive a copy for this file.

The tenant has applied to cancel a 1 Month Notice to End the Tenancy for Cause and is scheduled for a hearing on April 26, 2010. The evidence submitted is likely attached to that Application, however as the landlord had a copy of the documentation I allowed the tenant to read into evidence the witness statement.

The landlord submitted substantial documentation relating to many complaints from other tenants regarding this tenant and landlord actions and responses over several years. While the majority of this evidence is not germane to ending the tenancy early I have not considered documentation relating to the history of the tenancy other than the events of March 12, 2010.

Issues(s) to be Decided

The issue to be decided is whether the landlord is entitled to an order of possession to end the tenancy early without notice, pursuant to Section 56 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in December 1999 as a month to month tenancy in one rental unit and then transferred to another unit in December 2004 for a current monthly rent from the tenant of \$387.00 due on the 1st of the month, a security deposit in the amount of \$175.00 was paid.

The landlord submitted the following relevant documentation into evidence:

- A copy of a notarized statement from the other party involved in the altercation of March 12, 2010; and

- A notarized copy of a statement from another tenant in the building who witnessed the events of March 12, 2010.

The landlord testified that on March 12, 2010 another tenant in the building had been carrying grocery bags passed the respondent's rental unit and that after having words with each other the respondent assaulted the third party.

The landlord referred to the other party's notarized statement indicating that respondent attacked the third party, choked him and then forced his thumbs into the third party's eyes. The third party further noted that he freed himself and wrestled the respondent to the ground.

The tenant contents that the third party had been terrorizing him for seven or eight months. He noted that he had complained about the third party but that he was told to just ignore him.

The tenant's witness statement, read into evidence, suggested that the third party had assaulted the tenant before he began to choke him. The tenant stated the occurrence took no longer than 15 seconds.

The landlord also confirmed in his testimony that a 1 Month Notice to End Tenancy for Cause was issued to the tenant on March 24, 2010 with an effective date of April 30, 2010. The landlord testified that due to the vulnerable nature of the occupants in this senior's complex, he is concerned about their continued safety. The landlord confirmed that this was the first physical altercation that he is aware of.

Analysis

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

To obtain an order of possession under this section the landlord must show the tenant has seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant or significantly interfered with or unreasonably disturbed another occupant or the landlord. As well, the landlord must show that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to take effect.

I am satisfied, based on the evidence before me, the tenant unreasonably disturbed another occupant of the residential property and that he also seriously jeopardized the safety of another occupant.

However, as the effective date of the 1 Month Notice to End Tenancy for Cause is within 2 ½ weeks from this hearing date and based on the 11 year duration of this tenancy with no other documented occurrences of physical violence, I find the landlord has failed

to show how it would be unreasonable or unfair to the landlord or other occupants to wait for the notice to take effect.

Conclusion

As a result of my findings noted above, I dismiss the landlord's application to end the tenancy early.

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: April 12, 2010.

Dispute Resolution Officer