

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an order ending the tenancy early, pursuant to section 56 of the *Residential Tenancy Act*. Both parties appeared, gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

The landlord called one witness, her husband; and the tenant had a legal advocate assisting her at the hearing.

Issues(s) to be Decided

Is the landlord entitled to an order ending the tenancy early pursuant to Section 56 of the *Residential Tenancy Act*?

Background and Evidence

This month-to-month tenancy began on April 30, 2001. The residence is described as a house built in about 1904 that has been converted into 5 suites and the landlord also lives in the house with her husband and infant child.

Landlord's Evidence

The landlord testified that on May 5, 2010 at about 5:20 p.m. the tenant knocked on her door, was invited in by the landlord, and the parties had a discussion about a rent increase that had occurred in November, 2009. The landlord testified that the tenant had agreed to the rent increase and signed an agreement to the effect. During this conversation, the tenant advised the landlord that she had contacted the Residential Tenancy Branch who told her the increase was not legal. She stated that the tenant was agitated and not speaking with her typical soft voice and told the landlord that she wasn't going to pay more than 2.3%.

At about 8:40 p.m. the landlord, accompanied by her husband, took a memo to the tenant. She testified that the memo had some typing errors in it. The memo stated that the tenant was reminded that the rent was \$638.00 per month, which should have said \$637.00 per month; and that effective June 1, 2010 the rent would be \$685.00 per month which should have said \$683.00; and on September 1 and December 1, 2010 the rent would increase another \$47.0 per month on each of those occasions, which should have said \$46.00 per month on both of those occasions. The memo also stated that the increases are based on a written agreement quoting Section 43(1) (c) of the *Residential Tenancy Act*.

After delivering the memo she went home, then heard a door slam. Shortly thereafter the tenant knocked on the landlord's door, yelled and pushed her way in. The landlord asked her to leave but she pushed on her door preventing the landlord from closing it. The landlord told the tenant she was calling police and told her husband to get the phone, which he did. The tenant knocked the phone out of her hand and hit her in the face, her fingernails scratching the landlord's nose. The landlord got a 911 operator on the phone and the tenant left. She came back again yelling and banging on the door briefly and then left.

The landlord testified that at the time of the alleged assault, her husband was holding the infant baby and she told him that she did not want him involved. She further sent a notice to other tenants indicating that if they had heard a disturbance, she was aware of it.

Two officers arrived shortly after 10:00 p.m. The police told the landlord that the tenant had already attended the police station and they said they felt the tenant was the aggressor. They recommended a verbal warning rather than attempting to have Crown Counsel approve an assault charge at this point.

Prior to this incident the tenant and landlord had a positive relationship, there have been no complaints from other tenants, but now the landlord does not feel safe in her home.

The landlord's witness, her husband, also testified that the assault took place and that he heard the tenant yelling at the landlord stating that she would not pay the rental increase, and that the landlord had ruined her life.

Tenant's Evidence

The tenant testified that on May 4, 2010 she went to the Residential Tenancy Branch because of the rent increase. She received calculations from the Information Officer which she chose to show to the landlord. On May 5, 2010 at about 5:40 p.m. she gently knocked on the landlord's door with the paper in her hand, and advised the landlord that the Residential Tenancy Branch had explained to her that she could deduct the overpayment from a future rent cheque. She stated that she remained pleasant toward the landlord and suggested that they use a calculator or computer to figure out what rent the tenant should be paying on June 1, 2010. The landlord told her that she needed the money.

The tenant saw the landlord's husband outside through the window, who came into the residence just as the tenant was about to leave. Later she heard a gentle knock on her door and both the landlord and her husband were at the door, who did not enter the unit or speak at all. She testified that the expression on the landlord's face was full of anger and intimidation. The tenant was in shock, fearful and anxious because of the facial expression and lack of verbal communication by the landlord. The landlord handed her the memo regarding the rental increase. Her husband was polite, asked her how she was, and the tenant replied politely. Once they left, the tenant read the memo which spoke of rental increases that she had not known about at all, so she went to talk to the landlord with the memo in her hand. She did not stomp, nor was she aggressive. The landlord opened the door with an angry expression on her face and again the tenant was intimidated and fearful. She held up the memo and asked why the rent was being increased again and asked to discuss it. The landlord said nothing. The landlord's husband entered the room with the baby in his arms and started to speak, but his wife cut him off saying, "I'll handle this." The tenant was very upset, turned and ran to her unit without touching anyone, and panicked. She took off, went to the police station

crying, and spoke with the police officer. When asked if she was present when the landlord called 911, the tenant replied that she was not.

Analysis

I firstly refer to Section 56 of the *Residential Tenancy Act* that states that the landlord may apply for an immediate Order of Possession if certain conditions make it unreasonable or unfair to wait for a notice to end tenancy for cause under Section 47 to take effect. Therefore, the test to be met, and the burden of proof is on the landlord, to prove that it is necessary to issue a notice to end tenancy and evict the tenant without sufficient notice because of significant interference or serious health or safety concerns of the landlord or another occupant, or that the tenant has put the landlord's property at significant risk, or has engaged in illegal activity.

I accept the evidence of the tenant that no assault took place. The evidence is clear that the landlord needed more money for rent, and the memo that she took to the tenant was not even correct to the amount of increase that the parties had previously discussed. The tenant had no idea that the landlord had made "typing errors" in the memo. I don't accept the evidence of the landlord that the errors were unintentional, and if they were, the landlord did not explain to the tenant that the memo contained errors. Further, the memo contained too many "errors" to be acceptable as evidence that they were errors.

The tenant was obviously in a state of anxiety, and was obviously upset about the illegal rent increases, but I do not have any independent evidence to corroborate the evidence that any assault occurred. I find it very difficult to accept that her husband would stand idly by her side while being slapped in the face and having the phone slapped out of her hand even if she told him that she would handle it. I also have difficulty believing that the tenant would commit such an assault with the husband present.

I further find that the evidence of the landlord that the police suggested that she not press charges because Crown Counsel may not approve them is not likely in the circumstances that she testified to.

For the reasons set out above, I find that the landlord has not sufficiently proved her claim.

Conclusion

The landlord's application is dismissed.

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: May 20, 2010.

Dispute Resolution Officer