



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

ET

Introduction

This Dispute Resolution hearing was convened to deal with the landlord's application seeking an order to end the tenancy early without notice to the tenant.

Both parties appeared and gave testimony in turn..

Issue(s) to be Decided

Is the landlord entitled to end the tenancy without notice pursuant to section 56 of the Act?

Background and Evidence

Submitted into evidence by the landlord were copies of correspondence including letters of complaint from other renters, warning letters from the landlord to the tenant dated January 22, 2010, April 16, 2010 and June 18, 2010, a copy of a letter dated July 14, 2010 stating that, because of the continuing problems and the tenant's refusal to meet with the landlord as requested to discuss the complaints, a One-Month Notice to End Tenancy for Cause was being issued and a copy of the One-Month Notice for Cause issued to the tenant on July 14, 2010.

The landlord testified that the tenancy involved two co-tenants one of whom had resided in the unit for 23 years and his female roommate who had resided in the suite for approximately one year to date. The landlord stated that the complaints being received about disturbances or objectionable conduct pertained specifically to the female co-tenant and guests permitted in the common areas and the rental unit by the tenant.

The concerns included the operation a prostitution business on site utilizing both the suite and the common areas for that purpose, late-night noise, drug activity, littering the courtyard with condoms and drug paraphernalia, soliciting other tenants and their guests as well as the customers of the commercial tenant in the complex, frequent police presence, arrests on site and violent incidents related to drugs. In addition, the female tenant was known to smash windows to enter the suite when she did not have her keys and several windows are now in need of repair. The landlord testified that, since the one-month Notice for Cause was issued, the situation had become more dangerous and disruptive and other tenants had given the landlord an ultimatum under threat of ending their own tenancies. These other residents demanded that the landlord act to ensure that the tenants and their associates are permanently removed from the complex. The landlord provided testimony about his own experience in which upon approaching the common area to remove some garbage, he was solicited by several females, one of whom had a key and opened the door of the suite to encourage the landlord to enter the suite. The landlord stated that there was no doubt that the individuals frequenting the common area of the premises were associated with the tenants in the subject unit. The landlord stated that the male tenant's long term residency influenced the landlord to be tolerant, despite the fact that problems with the tenancy, primarily involving the main tenant's roommates, had been chronic in recent years. The landlord pointed out that this was the reason that he had refrained acting earlier to issue any previous One-Month Notices. The landlord indicated that it became necessary to end the tenancy because the tenant had been repeatedly warned and had broken many promises to rectify the situation. The landlord testified that, although he had already issued the One-Month Notice, which would be effective at the end of August 2010, the tenant had failed to dispute the Notice and the hearing to determine the outcome was not scheduled until near the end of September 2010. In the meantime, according to the landlord the situation has now become intolerable and he felt it was urgent to terminate the tenancy under section 56 on the basis that 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 under section 47 [*landlord's notice: cause*] to take effect .

The tenant testified that he had no control over the conduct of the roommate or her guests and was not home when most of the incidents in question occurred. The tenant stated that on one occasion he returned home to find that he was not permitted into his own suite and had to wait beyond the complex while armed police were making an arrest of someone in his suite. The tenant acknowledged that other residents in the complex had suffered the same inconvenience as he had that day. The tenant did not dispute that the guests and the roommate were engaged in the objectionable conduct being alleged by the landlord, but stated that the female roommate has now agreed to move out in the near future. The tenant made a commitment to stay home in order to keep control of who comes into the suite. The tenant truly wanted to maintain the tenancy relationship. When asked if he was willing to set a date on which he may possibly agree to vacate, the tenant stated that he was on a fixed income and disabled, but proposed September 30, 2010. The landlord was not amenable to this proposal and still wanted the request for an immediate Order of Possession under section 56 to be determined.

Analysis

I have found that the respondents named in this application are co-tenants. Section 13 of the Residential Tenancy Guidelines provides some guidance in regards to the rights and responsibilities of co-tenants. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting all the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Because co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

In addition to the above, if any one of the co-tenants gives notice to end the tenancy, this functions to terminate the agreement for *all* of the co-tenants and if a landlord gives notice to terminate the tenancy, it too would apply to all co-tenants and any occupants. Each one of the co-tenants is obligated, both individually and

as a group, to be completely accountable for liability for damages, violations of the Act, or conduct issues, even when perpetrated by only one of the occupants, or even a visitor.

Section 56 of the Residential Tenancy Act provides that a landlord may make an application for dispute resolution to request an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and granting the landlord an order of possession in respect of the rental unit.

Before issuing an Order ending the Tenancy under section 56 a Dispute Resolution Officer must be satisfied under section 56(2) that the following elements have been proven by the landlord:

a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;

Has engaged in illegal activity that:

- has caused or is likely to cause damage to the landlord's property,
- has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

(b) 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 under section 47 [*landlord's notice: cause*] to take effect.

Based on the testimony of the landlord and the witness, I find that this situation does satisfy the criteria specified in section 56(2)(a) of the Act. Because of the nature of the conduct in question and the fact that it appears that the tenant has not been able to control the situation despite his promises to the landlord, I find that the circumstances also meet the second threshold under 56(2)(b) and I find 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 under section 47 *[landlord's notice: cause]* to take effect. I find that the Landlord and other residents are at risk and the situation needs to be addressed in an urgent manner without undue delay.

Conclusion

Accordingly, I hereby order that this tenancy is ended as of 1:00 p.m. on Tuesday, August 31, 2010 and I grant the Landlord an Order of Possession effective on that date. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

August 2010

Date of Decision

Dispute Resolution Officer