



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes ET, FF

Introduction

This hearing was convened upon the application of the landlord seeking an Early End of Tenancy pursuant to Section 56 and recover of the filing fee paid for this application.

Both parties appeared and gave evidence under oath.

Question

Is the landlord entitled to end this tenancy early without giving notice as required by the Act? And, is the landlord entitled to recover the filing fee paid to make this application.

Background

The landlord says that the tenant did not pay her rent for August 1, 2010 and when he asked for payment the tenant's husband assaulted him.

The tenant says she recently came to the Residential Tenancy Branch and was successful in getting an Order compelling the landlord to make repairs to the rental unit. The tenant says the landlord refused to make the repairs and has become abusive to her and she believes he is angry and attempting to use any excuse to evict them. The tenant says that her husband met with the landlord in the parkade. The landlord was saying the rent had not been paid and he was going to issue a notice to end the tenancy. The tenant says her husband told the landlord he could come and get the cheque landlord began swearing at the tenant's husband and attacked him with a wrench. The tenant says both men ended up in hospital being treated for injuries. The tenant says she called the RCMP about the incident.

The Law

Section 56 of the Act says that a landlord may make an application for dispute resolution to request an order

- (a) 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] or 57.41 [notice to end tenancy: tenant's needs], and
- (b) granting the landlord an order of possession in respect of the rental unit.

And that the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application, either that:

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 interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that 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;
- engaged in illegal activity that 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

it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] or 57.41 [notice to end tenancy: tenant's needs] to take effect.

Findings

The testimony of the landlord and the tenant is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Based on the testimony of both parties I find that the landlord has failed to prove that any of the circumstances described above exist such that it would be unreasonable or unfair to the landlord or other tenants to serve the tenant with a notice to end tenancy under Section 47 and wait for that notice to take effect.

Having been unsuccessful in this application for an early end of tenancy I find that the landlord is not entitled to recover the filing fee paid for this application.

Conclusion

The landlord's applications are dismissed.
