



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 Application for Dispute Resolution to obtain an order of possession to end the tenancy early.

The hearing was conducted via teleconference and was attended by the landlord and her two witnesses and the two tenants.

Both parties had submitted evidence on DVD but neither could be run on my computer, both parties were notified of this in the hearing and that this specific evidence would therefore not be considered in this decision.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early without notice and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 56, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on September 1, 2005 and is a month to month tenancy for a monthly rent of \$2,400.00 due on the 1st of the month with a security deposit of \$925.00 paid.

The landlord testified that she is seeking an early end to the tenancy as a result of one of the tenants causing damage in the amount of \$700.00 to the front door of the residential property; and an incident on September 2, 2010 where the landlord states she was assaulted and threatened by the tenants and their guests; and that the tenants and their guests have unreasonably disturbed other tenants because of smoking and having pets on site; and as a result of illegal activity (smoking marijuana).

The landlord asserts that when new tenants moved in to the residential property they started locking the common front door, which had not been a practice of the tenants already in the property. On August 31, 2010 one of the tenants from the dispute address could not get into the building because of this locked door.

Both the landlord and the male witness testified that they saw this tenant kicking, pulling and trying to force open the door. The landlord testified that the new tenants locked the door again on September 2, 2010 before leaving for the day and when they returned later that day they noticed the door was broken and the lock destroyed.

The landlord alleges that this damage was caused by one of these tenants. The tenant, who the landlord holds responsible for this damage, testified that he did not cause any of the damage to the door.

The landlord testified that later that evening she attended the property to meet the police to discuss the damaged door and to take pictures of the door, the police did not arrive and while there the landlord stated she saw someone trying to enter the residential property with a dog.

She further testified that she attempted to stop the man from entering the unit and that he continued to try and enter the dispute rental unit. During this, one of the tenants tried to come out of the rental unit to see what was going on and pinned the landlord between the unknown man and the tenant. Eventually, the landlord testified, all of the tenants' guests came out of the rental unit and surrounded her.

She further states that she heard them say that they should call some friends to come over and that she would really regret being there. The landlord also stated that during this incident she realized that she could take a video of the events and started to do so and while doing so one of the tenants assaulted her by hitting her arm when she was trying to video events.

The tenants testified that the landlord was interrogating one of their guests at a barbecue they were hosting and that they went to find out what was going on. In arriving at the front door of the residential property the tenants state the landlord was hysterical and being unreasonable.

One of the tenants testified that he was trying to calm the landlord down and when she started recording the event on her phone he tried to stop her by putting his hand in front of the phone to block the images and in so doing he knocked into her.

The police were called and attended and spoke to both parties. The landlord stated that the police told her to stay away for her own safety until these matters were resolved through the Residential Tenancy Branch dispute resolution services. The landlord testified that as a result of this incident she is too scared to attend the property.

The landlord states the tenants have been disturbing other tenants by smoking in the rental unit and having pets, specifically a dog, attend the rental unit. The new female tenant, who moved in on August 31, 2010, has severe allergies to cats and dogs. The landlord notes that the tenancy agreement notes no smoking and no pets, although an exception had been made previously to allow cats.

The landlord also alleges the tenants were committing an illegal activity by smoking marijuana. The landlord's female witnesses testified that the tenants having been smoking marijuana in and around the residential property. She also testified that she has seen the dog back on the property since September 2, 2010.

The tenants suggest that there has been a long history of the landlord trying to end the tenancy that usually start off with a letter from her lawyer and that she has ended other tenancies on the residential property by giving tenants 24 hour notice to vacate.

In the tenants' documentary evidence there is a letter from the landlord's lawyer stating:

"This letter is your full and sufficient notice to deliver vacant possession of the premises aforesaid no later than September 10, 2010."

The letter goes on to say that the landlord has had an "emergency" hearing at the landlord's request to hear this case and that if the tenants intend to object to the termination they must submit their statement to the landlord's lawyer by September 10, 2010.

In relation to the matter of dogs on the property, the tenants testified that they had no idea that the new tenants had such severe allergies prior to the events of the early part of September 2010 and have since tried to be accommodating.

At the end of the hearing the landlord indicated that she was willing to allow the tenants to stay until the end of the month.

Analysis

Section 56 of the *Act* allows a landlord to make an application to request an early end to a tenancy that is earlier than the tenancy would end if a notice to end the tenancy were given under Section 47.

In order to be successful in such an application the landlord must provide sufficient evidence to establish the following two points:

1. There is sufficient cause to end the tenancy such as the tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. Seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant;
 - c. Put the landlord's property at significant risk;
 - d. Engaged in illegal activity that
 - i. has caused or is likely to cause damage to the landlord's property;

- ii. has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property;
 - iii. has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- e. caused extraordinary damage to the residential property; and
- 2. It would be unreasonable, or unfair to the landlord or other occupants of the property to wait for a notice to end the tenancy under Section 47.

In relation to the landlord's claim that the tenants caused the damage to the front door of the residential property, I find the landlord has failed to provide any evidence or eyewitness testimony that proves the tenants caused the damage to the front door.

In relation to the matters related to smoking, from the tenant's testimony regarding the landlord's attempt to end the tenancy in February 2010 for continuing to smoke on the property, I find the landlord has had sufficient time to deal with this matter prior to the new tenants moving in to the rental unit that would does not now warrant the landlord's need to end the tenancy early.

From the landlord's testimony and evidence it is clear that she was aware of dogs coming to the property in August 2010 and chose not to act on the matter until September 2, 2010 when the events noted above occurred. As one of the new tenants moving into the property is the landlord's daughter, the landlord would have been well aware of her daughter's allergies prior to the start of the tenancy.

In light of the landlord's assertion that the presence of animals is detrimental to the health of her daughter, she has provided no evidence that she warned the tenants that they needed to not allow friends with dogs to bring their dogs to the property and I find it does not now contribute to cause that requires an early end to the tenancy.

Despite the landlord's claim that the tenants or their guests smoke marijuana on the property they have not provided evidence that this is an illegal activity, as opposed to the tenants have medically justified and authorized use of marijuana or that the smoking of marijuana has caused any consequences listed under 1(d) above.

Finally, in relation to the landlord's assertion of an assault and threats, I find that the landlord had put in motion a series of events that was confrontational and disturbing to the tenants. Section 30 of the *Act* states a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by the tenant.

Had the landlord contacted the tenants to discuss the matter prior to entering into an altercation with one of the tenant's quests, the matter is not likely to have escalated to the confrontation that it became. I find the landlord cannot rely on this altercation that she initiated to end the tenancy early.

Despite the landlord's request to end the tenancy early because she is afraid to go the residential property, late in the hearing says that she is fine with allowing the tenants to stay an additional couple of weeks. As such, I am not convinced that she could not have waited for a one month notice to take effect.

I also find that the landlord's action by engaging her attorney to send a letter to the tenants indicating a end date to the tenancy, without a one month notice, when the matter of ending the tenancy early and without notice had not been heard by the Residential Tenancy Branch was an attempt to intimidate the tenants to vacate the property outside of the parameters of the *Act* and, in fact, is in direct contravention of Section 28 of the *Act* and the tenants right to freedom from unreasonable disturbance.

Conclusion

As a result of my findings above, I dismiss the landlord's application in its entirety.

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: September 17, 2010.

Dispute Resolution Officer