



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with an application by the landlord for an early end of tenancy and recovery of the filing fee. Despite having been personally served with the application for dispute resolution and notice of hearing, the tenants did not appear at the conference call hearing. As I found the tenants had been properly served with notice of the hearing and of the claim against them, the hearing proceeded in their absence.

Issue to be Decided

Is the landlord entitled to an order ending this tenancy early?

Background and Evidence

The landlord's undisputed testimony is as follows. The rental unit is in the basement of a residence in which the landlord occupies the upper floor. The tenants have frequently disturbed the landlord and his family by banging doors, playing their television loudly and leaving garbage and dog excrement in the backyard. In July, one of the tenants hit the landlord's elbow with the door of her truck, thereby injuring him. The landlord served the tenants with a one month notice to end tenancy for cause in response to what he characterized as an assault. The tenants did not vacate the rental unit at the end of August, the effective date of the notice. The landlord had arranged for new tenants to occupy the rental unit and because the tenants did not vacate, the new tenants have stored their belongings in the landlord's garage and hallways. The tenants recently swore at the landlord and spit on the window of his car and also called the landlord's son and a guest "perverts." The landlord submitted statements from his son

and the guest in which they both claim that the tenant was discriminating against them by calling them perverts. The landlord also complained that the tenants' smoke alarm has been activated on at least 2 occasions.

Analysis

Under section 56(2)(b) of the Act, in order to establish a claim for an early end to tenancy, the landlord must establish not just that he has cause to end the tenancy, but that "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" (emphasis mine). I am not satisfied that this unreasonableness or unfairness exists. The landlord has already served a one month notice to end tenancy and its effective date has already come and gone. Most of the events described by the landlord occurred prior to the issuance of that notice. Although there have been subsequent events, I find that they are insufficient to establish the landlord's claim. Specifically, although the landlord's son and guest claimed the tenant had acted in a discriminatory fashion when calling them an unpleasant name, I can see no evidence of discrimination and although the behaviour was inappropriate, I find that it does not meet the high threshold established under this section of the Act. The tenants' actions in swearing at the landlord and spitting on his car may establish grounds to end the tenancy, but again do not in my view make it unreasonable or unfair to the landlord to wait for a notice to end tenancy to take effect.

In this case, the effective date of the notice to end tenancy has already passed and the landlord chose not to apply for an order of possession to enforce the notice. The landlord indicated that he had pursued an early end to tenancy because he did not want to wait for a long time to have a hearing. The Act does not permit me to grant an early end to tenancy in order to give an immediate remedy to a landlord who has neglected to act quickly to enforce his legal rights. For these reasons I dismiss the landlord's claim.

Conclusion

The landlord's claim is dismissed.

Dated: September 27, 2010

Dispute Resolution Officer