Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

ET, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an early end of the tenancy and an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant via registered mail at the address noted on the Application, on October 18, 2010. A copy of a Canada Post receipt and tracking number was provided as evidence of service. These documents are deemed to have been served in accordance with section 89 of the *Act;* however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to filing fee costs?

Background and Evidence

On September 1, 2010 the landlord issued the tenant a 1 Month Notice ending tenancy as the result of an Order of the City of Surrey. The city had determined that the suite was illegal and must be vacated.

Prior to the City issuing the Order the upstairs occupants had reported noise problems on at least 10 occasions commencing on July 28, 2010; despite calls to the police and the landlord's attempts to have the tenant cease the disturbances, they continued and accelerated after the Notice was issued. The upstairs tenants reported an additional eighteen disturbances since September 1, 2010 to October 4, with on-going noise since then.

The upper and lower suites share laundry by doors adjoining the laundry room. Approximately 1 month ago the tenant barricaded the laundry room door, denying

access to the upstairs occupants. The witness stated that he and landlord have attempted to enter the laundry room from his entryway and he believes it must be barricaded with bars and that it is likely the door and door frame would need to be destroyed in order to gain access.

The radiant heat system is also located in the laundry room and the landlord has been denied entry so that he can provide the two units with heat. On October 1, 2010, the landlord posted written Notice of entry to the tenant's unit for October 5, 2010. When he attempted to enter the unit the tenant did not come to the door; her 2 dogs were in the unit. The landlord described the dogs as pit bulls and he was too afraid to enter the unit. The landlord attempted to have the police escort him, but they referred him to the Residential Tenancy Branch for assistance.

Two weekends ago the landlord was able to speak to the tenant through her door; up until this time she has refused to answer his calls or respond at the door. The tenant refused to allow the landlord access, told the landlord she had 6 months to leave the unit, that his attempt to enter was illegal and that she was planning on causing damage to his property.

The landlord has supplied the upstairs occupants with space heaters but the electrical breakers often fail, leaving them without heat or electricity in one half of the unit. The power eventually comes back on, but the space heaters are inadequate to heat the home. The witness has tried to talk to the tenant, but she avoids him. The witness stated the police will not help them and he is tired of all the noise and the lack of laundry and heat. He has children who reside upstairs.

The witness stated that over this past weekend they could hear the sounds of construction coming from the unit, hammering and what sounded like wires being pulled.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that he has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord and his witness, I find that the landlord has met that burden.

In relation to sufficient cause, I find that the laundry room has been barricaded by the tenant. The landlord should not be expected to have to destroy a doorway in order to access the laundry room to inspect the heating system. The refusal of the tenant to communicate with the landlord or to facilitate his entry, as provided by the Act, has interfered with the landlord's lawful right to maintain the property. The failure of the tenant to allow the landlord safe entry after written notice was provided has denied the landlord the ability to exercise his rights and his obligation to ensure his upstairs occupants are provided with essential services, such as heat. As a result, the upstairs occupants have been denied an essential service due to the tenant's actions.

Secondly, I have considered whether, in the circumstances it would be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47 of

the Act. The landlord has issued the tenant a 1 Month Notice as the result of an Order of local government, but since that time the noise and reaction of the tenant has seriously impacted the upstairs occupants, interfered with their right to quiet enjoyment and an essential service and thwarted the landlords obligation to maintain the property. I find that it would be unreasonable to have the landlord wait for a Notice under section 47 take effect.

Therefore, I find that the landlord is entitled to an immediate order for possession. A formal Order has been issued and may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord's Application has merit I find that the landlord is entitled to the sum of $50 being the cost of the filing fee paid pursuant to section 59.

Conclusion

The landlord has been granted an Order of possession that is effective immediately. This Order may be served on thetenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: October 25, 2010.

Dispute Resolution Officer