

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application for Dispute Resolution seeking to end the tenancy with the tenant pursuant to section 56 of the *Act*.

The tenant did not appear for the hearing. The landlord provided affirmed oral evidence but did not provide any documentary evidence. The landlord stated that he was not aware of the requirement to serve and provide evidence to both the *Residential Tenancy Branch* and the tenant. I directed the tenant to the Notice of Hearing document which clearly states in the final paragraph the following:

Before the hearing date, both the Applicant and the Respondent must give each other, and the Residential Tenancy Branch, a copy of all their evidence. The deadlines are in the attached hearing package.

I provided the landlord with the opportunity to either proceed on oral testimony only or to withdraw this application and re-apply as it would be prejudicial to proceed with the hearing when the tenant had not been served with a copy of the evidence. The landlord opted to proceed with the hearing in the absence of supporting evidence.

The landlord testified that he served the tenant with notice of this application and hearing on September 22, 2010 in person. Based only on the oral testimony of the landlord I accept that the tenant was served with notice of the hearing in accordance with section 89 of the *Act*.

Issues(s) to be Decided

Has the tenant's breach of the tenancy agreement, *Act* and regulations been so significant as to entitle the landlord to end this tenancy early without waiting for a notice under section 47 of the *Act* to take effect?

Background and Evidence

The landlord testified that this tenancy began on September 30, 2008 for a fixed term ending in six months. The monthly rent is \$720.00 and a security deposit of \$350.00 was paid at the start of the tenancy.

The landlord testified that the tenant has breached three terms of the tenancy agreement entitling the landlord to end the tenancy early. The first breach is the tenant's failure to pay the rent owed on September 1, 2010. The tenant subsequently made a partial payment of \$400.00; however, \$350.00 is still outstanding. The second breach is that the tenant began smoking in the rental unit contrary to the tenancy agreement which specifically prohibits smoking. Finally the tenant is allowing additional occupants into the rental unit contrary to the tenancy agreement.

The landlord described how his family is being unreasonably disturbed by the noise and smoke from the rental unit. The landlord described an event where the tenant was playing video games so loudly that they had to contact the police. The landlord submitted that due to the disturbances at night and smoking, his children's health is at risk as they have allergies and sensitivities to smoke.

The landlord requested an Order of Possession.

Analysis

I deny the landlord's application as I find that the landlord has not met the test required under section 56 of the *Act* to end this tenancy early.

Section 56 of the *Act* is an extraordinary remedy which grants the Director authority to end a tenancy without a notice of end tenancy if sufficient cause is established and the landlord demonstrates that it would be both unfair and unreasonable to allow the tenancy to continue until a one month Notice to End Tenancy under section 47 would take effect.

I find that all the stated reasons for an early end to the tenancy brought forward by the landlord can be remedied by issuing notices under sections 46 or 47 of the *Act* and then filing an application for Dispute Resolution based on those notices.

The landlord has not provided any compelling evidence or reasons to demonstrate that it would be unreasonable or unfair to the landlord to wait for a notice under section 46 or 47 to take effect.

Conclusion

I have denied the landlord's application and dismiss it without leave to re-apply. I have determined that the landlord has not demonstrated that it would be unfair or unreasonable for the landlord to wait for a notice to end tenancy to take effect under sections 46 or 47 of the *Act*.

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 05, 2010.

Dispute Resolution Officer