



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ET, FF

Introduction

This matter dealt with an application by the Landlord for an order ending the tenancy earlier than it would end if the Landlord was required to serve the Tenants with a One Month Notice to End Tenancy for Cause and wait for the applicable notice period (or effective date) to expire. The Landlord also applied to recover the filing fee for this proceeding.

At the beginning of the hearing the Tenants claimed that they had submitted evidence to the Residential Tenancy Branch on November 12, 2010, however it was not available at the time of the hearing. The Tenants said they gave this evidence to the Landlord in person on November 1, 2010 when he served them with his hearing package however the Landlord denied this. In the circumstances, I excluded any late filed evidence pursuant to RTB Rule of Procedure 11.5 but allowed the Tenants to refer to it in their oral evidence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy early?

Background and Evidence

The Landlord said J.S.'s tenancy started approximately 3 years ago, J.J.'s tenancy started approximately 2 ½ years ago and K.R.'s tenancy started in March 2010. The Landlord also claimed that rent is \$1,200.00 per month, however the Tenants claim that every tenant of the rental property (including those renting the basement and the garage) pay \$400.00 per person.

The Landlord said the Tenants have caused significant damage to the rental property by putting holes in walls and interior doors, breaking windows and damaging the front door and light. The Landlord also said that the police have had to attend the rental property approximately 17 times in the past year and have verbally warned him to deal with the tenants. The Landlord claimed that the Tenants, J.S. and K.R., beat up J.J., threw her out of the rental unit and changed the locks. The Landlord said the Tenants have failed or refused to provide him with a key for the new lock.

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The Landlord further claimed that the Tenants have accumulated a large amount of old clothing and other items (which they routinely bring home from dumpsters) which has created a fire hazard and the smell attracts rodents. The Landlord said he has been verbally warned by the municipality that if the large number of items is not removed from the porch and grounds, they will have it removed at the Landlord's expense. The Landlord also claimed that the Tenants frequently have unauthorized visitors staying with them.

The Tenants, J.R. and K.R., denied that they were responsible for the property damage and claimed instead that it was solely caused by J.J. These Tenants admitted that the police were frequently called because they claimed that the Tenant, J.J. had mental health issues and would "go on a rant" and start smashing things. J.R. and K.R. said that they asked the Landlord to do something about J.J. and he told them that he would evict her but he didn't do anything. K.R. and J.R. said that approximately 2 and ½ months ago, J.J. attempted to kill K.R. and had to be removed by the RCMP and was put under conditions to have no contact with them. K.R. and J.R. said they later changed the lock on the front door however J.J. tried to break in with a steel pipe and damaged the door. J.R. and K.R. said the police have only had to be contacted once since J.J. was removed but that was the result of a mistake.

J.R. and K.R. said they have repaired much of the damage caused by J.J. These Tenants also said that the Landlord never made an issue of not having a new key prior to these proceedings, however they said they would provide him with one right away. The Tenants denied that there was a fire hazard inside the house or that it was unreasonably clean and denied the Landlord did an inspection 3 weeks ago as he claimed. The Tenants said the Landlord told them he would be coming to take pictures for this proceeding however he never showed up.

The Tenants, J.R. and K.R. also denied that the piles of clothing and other accumulated items outside and on the porch were theirs and claimed instead that it all belonged to J.J. These Tenants said the Landlord advised them to remove all of the clothing J.J. had piled up inside however they said they left it on the patio because they were concerned about reprisals from J.J. and felt the Landlord should deal with it. The Tenants argued that the Landlord's real motive in trying to evict them was because they did not agree to him moving in more occupants.

Analysis

Section 56 of the Act says that a Landlord may apply to end a tenancy earlier than it would end if a Notice to End tenancy for Cause under s. 47 of the Act had to be given. In order to succeed on such an application, the Landlord must show that one or more of

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the grounds set out in subsection 56(2) of the Act exists and that it would be unreasonable or unfair to have to wait for a Notice to End Tenancy under s. 47 of the Act to take effect. In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenants, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlord argued that all of the Tenants including J.S. and K.R. were responsible for damaging the rental property and leaving it in an unsanitary state. In particular, the Landlord said the Tenants are jointly responsible for paying \$1,200.00 per month. Tenants argued that they are not joint tenants but rather have separate agreements with the Landlord to pay \$400.00 per month and paid separate damage deposits of \$200.00 each at the beginning of their respective tenancies. The Tenants said the Landlord completed shelter reports to social assistance showing their rent was \$400.00 per month. The Tenants' witness who has been a long-term neighbor of the rental property gave evidence that over the past three years, she has been advised by tenants of the rental property that it is a "boarding house" and that they each pay \$400.00 per month.

RTB Policy Guideline #13 says that tenants in common share the same premises but enter into separate tenancy agreements with a landlord whereas joint tenants enter into the same tenancy agreement. This difference is significant in that if the Tenants are joint tenants, then the Landlord can end the tenancy of all tenants due to the act of one tenant, however if the Tenants are tenants in common, the Landlord cannot end the tenancies of J.S. and K.R. due to the acts of J.J. The Landlord did not provide any documentary evidence at the hearing such as a tenancy agreement to support his claim that the Tenants are joint tenants. The Tenants, J.R. and K.R., claimed that they started living in the rental unit and different times, that their rent is paid separately to the Landlord and that they paid separate security deposit. Given the contradictory evidence of the Tenants and in the absence of any corroborating evidence by the Landlord, I find that the Landlord has not provided sufficient evidence to show that it is a joint tenancy and I conclude that the Tenants are more likely tenants in common.

As a result, the Landlord can only end the tenancies of J.R. and K.R. if he can show that they were responsible for damages to the rental property or harmed the other tenant, J.J. The Tenants' evidence was that the damages inside the rental unit were caused by the acts of J.J. and that they have taken steps to repair most of them. The Tenants also claim that the large number of articles on the porch and on the property outside belongs to J.J. and they are waiting for the Landlord to remove them. The Tenants denied harming J.J. but claimed she could no longer reside in the rental unit because she had become violent and was under conditions to have no contact with them. The Landlord disputed all of these matters but provided no corroborating evidence. Consequently, I also find that there is insufficient evidence to conclude that the Tenants,



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J.S. and K.R. are responsible for the damages to the rental unit and the large accumulation of articles on the rental property.

For all of the above-noted reasons, I find that there is insufficient evidence to support the Landlord's application to end the tenancies of J.R. and K.R. early (and as J.J. is no longer residing in the rental unit), it is dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed without leave to reapply. 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: November 15, 2010.

Dispute Resolution Officer