

DECISION

Dispute Codes: ET

Introduction

This application was brought by landlord on December 17, 2010 seeking an Order of Possession to end the tenancy early under section 56 of the *Act*. This section permits such applications in situations where it would be unreasonable for the landlord to wait for an order under section 47 of the Act which requires a Notice to End Tenancy of a minimum of one month.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession under the requirements of section 56 of the *Act* and, if so, the effective date of such order.

Background and Evidence

This tenancy began on July 1, 2010 under a fixed term rental agreement set to end on June 30, 2010. Rent is \$1,050 per month and the landlord holds security and pet damage deposits of \$575 and \$500 respectively, both paid on June 28, 2010.

This tenancy in a ski resort community was the subject a recent hearing on the tenants' application for a ruling that the tenancy falls within the jurisdiction of *the Residential Tenancy Act*; the Dispute Resolution Officer found in the affirmative.

In the present application the landlord seeks an Order of Possession under section 56 of the *Act*. This section of the *Act* provides a mechanism for landlords to use when there is imminent threat to the property or persons due to the conduct of the tenants. It does not require service of a Notice to End Tenancy, requires a high standard of proof that the matter is too urgent to proceed under Notice for cause, and such applications are given the highest scheduling priority.

In the present application, the landlord has cited among the causes for ending the tenancy early:

1. Visitors bringing a dog in spite of rules to the contrary;
2. Dog left alone and barking for two hours;
3. Tenants storing bicycle and snowboard in the rental unit;
4. Tenants smoking marijuana in the rental unit and on the balcony;
5. Tenants and/or guests smoking cigarettes in the rental unit or on the balcony;
6. Gas can and trash can stored on the balcony;
7. Bathroom fan left to run for too long;
8. Too many guests;
9. Tenants parking in restricted area;
10. One loud party;
11. Refusing to allow inspection;
12. Broken furniture;
13. Smoke detector disconnected;
14. Landlord's wife in need of medical treatment due to stress of unpleasant tenancy.

The male tenant gave evidence that he is a certified volunteer firefighter and well aware of fire hazards. He stated that the smoke detector, while hanging as shown in the landlords photos was lit and working and the gas can on the balcony was empty.

He stated that he and his partner are both asthmatic and do not smoke cigarettes or marijuana.

He stated that the landlord's application had been driven by an earlier incident in which the landlord, erroneously believing that the *Residential Tenancy Act* did not apply to the tenancy, had changed the access code to the rental unit without providing the code to the tenants. This led to police involvement and apparently escalated

The tenant submitted that some of the photos submitted by the landlord showing an unkempt condition of the rental unit were actually photographs of the storage unit. He stated that the alleged broken furniture was actually a couch designed to allow removal of the arms.

Analysis

As noted, the early end of tenancy option offered under section 56 of the *Act* is intended to offer an expedited mechanism to end a tenancy in circumstances so dire that it would be unreasonable for a landlord to have to wait for a Notice under section 47 of the *Act* to take effect.

Such circumstance might exist if the landlord's assessment of fire risk were to be substantiated. However, I am persuaded by the tenant's evidence that her is a certified firefighter, there is no careless smoking in the rental unit, the smoke detector is operable and there is no fuel in the gas can stored on the balcony.

The tenants' conduct during the hearing indicated that they have the intellectual resources and will to manage disagreement with civility and control.

Therefore, I can find no urgency in this matter that would justify circumventing the provisions of section 47 of the Act requiring Notice to End Tenancy for cause.

Conclusion

The application is dismissed and the landlord remains at liberty to issue a Notice to End Tenancy for cause and to make a new application under section 47 of the Act.

December 29, 2010