



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

ET

Introduction

This Dispute Resolution hearing was convened to deal with the landlord's application seeking an order to end the tenancy early without notice to the tenant.

Both the landlord and the tenants appeared and gave testimony.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy without notice pursuant to section 56(1) of the Act?

Preliminary Issue: Submission of Evidence

The applicant landlord had submitted an evidence package containing photos which was received by Residential Tenancy Branch on January 11, 2011. However, the landlord did not serve this evidence to the tenant.

I note that the information contained in the hearing package makes it clear that "*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible.*" Section 88 and 89 of the Act specifies how and when documents must be served.

In addition to the above, Residential Tenancy Rules of Procedure, Rule 3, requires that the applicant must submit evidence to the Residential Tenancy Office and serve all evidence being relied upon to the respondent at the same time as the application is filed or at least (5) days before the dispute resolution proceeding. (my emphasis)

In the case before me, I find that, the landlord's evidence was submitted to the Dispute Resolution file after the deadline and was never served on the respondent tenant at all. Therefore, I found that I must decline to accept or consider any evidence that was not properly served on the other party. However, both the landlord and tenant were still permitted to give verbal testimony on the matter before me.



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Background and Evidence

The tenancy began on November 1, 2010 with rent set at \$1,000.00. No security deposit was paid.

The landlord testified that the tenant failed to pay rent owed when it was due and fell into arrears. Although the landlord had apparently issued more than one Ten Day Notice to End Tenancy for Unpaid Rent, which were in evidence, the landlord had not made an application for dispute resolution to end the tenancy based on the Ten-Day Notice. Instead, the landlord filed the application before me seeking an Order of Possession under section 56(1) of the Act which allows a landlord to immediately end the tenancy early without Notice. The landlord stated that it was hoping to terminate this tenancy without further delay.

In support of her application, the landlord testified that the tenants had destroyed the landlord's property causing serious damage to the rental unit. The landlord testified that the tenant had also been growing marijuana. According to the landlord, the tenants had threatened the landlord with physical violence after which police were called. Although the tenant was not criminally charged, the landlord testified that these threats prevented the landlord and the landlord's family from doing their farming tasks on the nearby acreage as they now fear for their own safety. The landlord also stated that the tenant was seen hovering around the landlord's door and there were incidents of vandalism that the landlord attributed to the tenant. The landlord feels that this situation would justify issuing an order to end the tenancy without Notice under section 56(1). The landlord's position was that the tenant seriously jeopardized the health, safety or lawful right of the landlord and others, put the landlord's property at significant risk and it would be unreasonable or unfair to wait for a One-Month Notice for Cause to take effect.

The tenant disputed all of the above verbal allegations made by the landlord and testified that no damage has been caused to the rental unit that was not already there when they moved in. The tenant testified that no marijuana was being grown and this was confirmed by police when they attended. The tenants also denied ever threatening the landlord with violence and stated that it was the landlord who had threatened the tenant. The tenant stated that the landlord had apparently entered the unit while the tenant was out and stole some possessions and changed the locks on the unit illegally. The tenant denied coming to the landlord's home except to serve the landlord with a Notice of Hearing for a dispute Resolution proceeding that is scheduled to be heard on January 24, 2011. The tenant stated that this upcoming hearing was to deal with the

tenant's application to cancel the Ten Day Notice to End Tenancy issued by the landlord in December 2010. In regard to the landlord's application, the tenant's position was that all of the landlord's testimony was untrue. The tenant believes that there was no valid cause to end the tenancy under the Act and that an order of possession is unwarranted.

Analysis

Section 56 of the Residential Tenancy Act provides that a landlord may make an application for dispute resolution to request an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and to ask for an order of possession.

Before issuing an Order ending the Tenancy under section 56 a Dispute Resolution Officer must be satisfied under section 56(2) that both of the following has been proven:

a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

1.

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;

Has engaged in illegal activity that:

- has caused or is likely to cause damage to the landlord's property,
- has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property,

and

2.

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

In this instance the landlord's verbal testimony about serious misconduct by the tenant, was disputed by the tenant.

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord, has the onus of proving, that the compensation being claimed as damages is justified under the Act.

When the evidence only consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, I find that there is no need to determine which party is more credible or which set of "facts" is more believable. Because the landlord carried the added burden of proof, I find it was necessary to provide adequate evidence beyond mere verbal allegations to support this application.

Based on the testimony of the landlord and the evidence, I find that the landlord has not provided sufficient evidentiary support to meet the criteria specified in section 56(2)(a) of the Act.

Conclusion

Accordingly, I hereby dismiss the landlord's application without leave.

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: January 2011.

Residential Tenancy Branch