



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 tenant and her witness 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?

Background and Evidence

The tenancy began approximately 7 years ago and the current rent is \$1,050.00. A security deposit of \$525.00 was paid.

The landlord's application states that the tenant has , "*seriously jeopardized the other tenant. drinking, fighting*". The landlord testified that the co-tenants living in the unit were no longer getting along and their fighting is disturbing other occupants in the building. On one occasion this required police attendance. The tenant testified that the complaint about a disturbance had no basis and pointed out that the police did not charge anyone.

Although, over the past few months, the landlord had apparently issued three One Month Notices to End Tenancy for Cause, one of which was in evidence, the landlord had not previously taken any steps to enforce these Notices. According to the tenant, the landlord had waived all of the Notices. The landlord testified that he had waived some of the One-Month Notices, but did not waive the most recent Notice issued on October 27, 2010. This testimony was challenged by the tenant. The tenant believes that there is no valid cause to end the tenancy under the Act and that an order of possession is unwarranted.

The landlord stated that the downstairs renter was now threatening to leave and the landlord is hoping to terminate this tenancy without further delay to avoid losing the other renters.

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 otherwise end with a One Month Notice to End Tenancy for Cause under section 47.

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; or
2. 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; or;
3. Caused extraordinary damage to the residential property;

If the above criteria has been proven AND 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. (my emphasis), then an Order of Possession may be warranted under section 56

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 landlord in this case the landlord has the onus of proving that the order 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. Given that the landlord carried the added burden of proof, I find it was necessary for the landlord to

provide additional evidence beyond mere verbal or written 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 to prove that the tenant was jeopardizing another occupant to satisfy the criteria specified in section 56(2)(a) of the Act. Moreover, based on the fact that several One-Month Notices have been issued in the past, with ample opportunity for the landlord to enforce them, I find that the landlord has not proven that it would be unreasonable, or unfair to wait for a notice to end the tenancy under section 47.

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