



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

ET, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an early end of the tenancy; an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the tenant on January 17, 2011, at the tenant's rental unit, with the executive director present, at 4:15 p.m.

These documents are deemed to have been served in accordance with section 89 of the *Act*, however the tenant did not appear at the hearing.

The landlord stated that, at the landlord's request, the RCMP had attended to be present with the tenant during this hearing. The tenant had come to the landlord's office, prepared to proceed with the hearing in the presence of the landlord. The landlord ensured that the RCMP were given dialing instructions, so that the tenant could be assisted in entering the conference call hearing via his own telephone; however, the tenant did not attend the hearing.

Preliminary Matter

The landlord did not serve the tenant with the evidence documents submitted to the Residential Tenancy Branch on January 17, 2011; as required and set out in Notice of hearing, therefore, all evidence was set aside and the landlord was at liberty to provide verbal testimony.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in April 2009, at which time the landlord was made aware of the tenant's health issue which required him to take medication. The landlord provided affirmed testimony that the tenant has ceased taking his medication and is now causing concern to other senior citizen occupants of the building.

The landlord testified that up until December 27, 2010, no complaints or concerns had been issued by other occupants of the building. On December 27, 2010, the tenant made a call to the landlord's emergency telephone number indicating he had information he needed in relation to another occupant (S.W.) and that he required personal contact information for that occupant. At 12:25 a.m. the tenant called the RCMP asking them to intervene, as he felt the need to share health information he possessed in relation to occupant S.W.

After speaking with the tenant on December 27, the RCMP placed a call to the occupant's unit and spoke with her daughter, who indicated that her mother felt she was being harassed by the tenant. On the morning of December 27, 2010, the landlord issued and hand-delivered a letter to the tenant directing him to cease contacting other occupants; warning him that he must not disturb other occupants or he could face eviction.

At 10:30 p.m. on December 27, 2010, the tenant went to the occupant S.W.'s door, as he wanted a cork screw.

On December 28, 2010, the landlord issued the tenant a 1 Month Notice ending tenancy for cause, as he had contravened the instructions given in the letter issued the day prior. The landlord stated the tenant did not dispute that Notice, which has an effective date of January 31, 2011. The landlord has not applied for an Order of possession based on that Notice.

On January 2, 2011, the tenant was given a note, in the presence of the landlord, by occupant S.W. directing him to cease all contact with her. On January 3, 2011, the tenant went to S.W.'s door and at this point S.W. agreed to meet with the tenant in a common area in order to discuss her concerns, in the hope she could persuade him to stay away from her. The landlord was not made aware of the meeting, nor did S.W. report the tenant to the landlord on January 2, 2011.

The landlord reported that she was told by a Health Authority staff member, who had been told by another staff member, that the tenant had approached a mental health staff

member at 11 p.m. on January 24, 2011, wearing only an open housecoat with no undergarments on. An attempt to reach a Health Authority staff member to testify was not successful.

On January 24, 2011, the tenant again attended at S.W.'s apartment, at 10:30 p.m., requesting soy milk.

Several male occupants' submitted letters to the landlord in January, alleging the tenant has entered a unit without permission, made rude gestures and once, when occupant R.D. was having tea in the tenant's unit, threw a head of lettuce at R.D. R.D. also alleged that the tenant has told other occupants that R.D. is a child molester, that the tenant is mentally ill and that the tenant feels he could cause harm to someone else. Neither occupant was available to testify.

On January 6, 2011, the tenant left his rental unit while a pot was on the stove. The landlord entered the unit, based on a report of smoke, and found the unit full of smoke and a pot on a burner. The landlord issued and served the tenant with a letter on that date warning the tenant of the possible safety threat that the tenant had posed to other occupants. The landlord also reminded the tenant that his suite was found to be in disarray, that lights mounted on the walls caused a safety concern and that the tenant must keep his unit in a tidy, clean state, free of clutter; as required by the terms of the tenancy agreement signed between the parties.

The January 6, 2011, letter informed the tenant that a follow-up inspection would take place on January 7, 2011; during which time the unit was found to be in the same state.

The RCMP have attended at the rental unit on 3 occasions; however, none of those occasions were due to the need to intervene in any altercation with the tenant.

The landlord stated that they have on-going concerns about the tenants' mental state and the possible risk he may pose to other occupants. The landlord believes, from what the tenant has told others, that he is not currently taking medication and that he could harm someone. The landlord stated that mental health services are aware of the tenant and that any action that would support arrest due to mental health would be acted upon. The landlord stated that the tenant's behaviour supports the request for an early end to the tenancy.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that they have cause to end the tenancy, but that it would also be unreasonable or unfair to require the landlord to wait for a Notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord, I find that the landlord has not met that burden.

Section 56 of the Act provides a landlord with the ability to obtain an Order of possession if any of the following apply:

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

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
- (iii) put the landlord's property at significant risk;*
- (iv) engaged in illegal activity that*
 - (A) has caused or is likely to cause damage to the landlord's property,*
 - (B) 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*
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*

(v) caused extraordinary damage to the residential property, and

(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.

I have not made any finding in relation to the submissions made in support of an early end to this tenancy, as provided by section 56(a) of the Act; only that the reasons given by the landlord have not convinced me that an Order of possession is immediately required.

I have considered section 56(b) of the Act; if, in the circumstances it would be unreasonable and unfair to require the landlord to wait for a Notice to end the tenancy under s. 47 of the Act. The landlord testified that a 1 month Notice ending tenancy for cause was issued to the tenant, with an effective date of January 31, 2011; apparently, the tenant did not dispute that Notice. I find that it would not be unreasonable or unfair for the landlord to wait for the Notice to end tenancy, issued with an effective date of January 31, 2011; only 6 days following this hearing date.

The landlord is at liberty to submit an Application requesting an Order of possession on what they state is a valid Notice ending tenancy issued to the tenant, effective January 31, 2011. I have made no finding in relation to the force of that Notice or service of that Notice to the tenant.

As the landlord's Application is without merit, I decline filing fees to the landlord.

Conclusion

The Application is dismissed.

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 27, 2011.

Residential Tenancy Branch