

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an application by the landlord/applicant for an early end to this tenancy pursuant to section 56 of the *Residential Tenancy Act* (the *Act*). Both parties attended the hearing and were given a full opportunity to be heard, to call and question witnesses, to present evidence and to make submissions. The parties agreed that the applicant handed the tenant/respondent her dispute resolution hearing package for this application on January 26, 2011. I am satisfied that the applicant served the respondent with this package in accordance with the *Act*.

At the commencement of the hearing, I clarified that this hearing to consider the applicant's application for an early end to this tenancy and an Order of Possession was separate and distinct from applications from both parties (Residential Tenancy Branch Files 766461 & 766472) to be considered at a dispute resolution hearing scheduled for February 7, 2011. I emphasized that in this hearing I was only taking into account the oral and written testimony entered into evidence for the consideration of the present application for an early end to this tenancy.

During this hearing, both parties had to be reminded to conduct themselves appropriately. The respondent answered a number of work-related telephone calls on another line that he received during the hearing.

Issues(s) to be Decided

Is the applicant entitled to an early end to this tenancy? Is the applicant entitled to an Order of Possession?

Background and Evidence

The applicant testified that the applicant entered into a tenancy agreement with the owners for this two unit residential property on or about March 1, 2010. The applicant, her teenaged daughter and son live in the upstairs (Main Floor) rental unit and rent the lower basement level out to tenants. The tenant said that he and a friend moved into the two bedroom basement rental unit by October 15, 2010.

Since that time, the applicant testified that there have been a series of people living with the tenant in this rental unit. She maintained that the respondent has neither sought nor obtained her consent or approval for most of the people who have been residing in his rental suite. He said that he had her oral agreement for the tenants who moved in with him. She claimed that 3 or 4 people presently live in the respondent's rental unit. He

said that there is one other tenant. The applicant and her witness who is presently staying with her testified that the police have had to attend the rental unit frequently and that the noise, disturbance, partying, foul language and violence has been escalating to the point where the applicant and her family are concerned for their safety and health. The applicant and the co-owner of the property testified that the respondent has changed locks and refused on two occasions to comply with the property owner's written requests to let him inspect the respondent's rental unit. The respondent admits that he has changed locks to gain access to his rental suite without giving keys to these locks to either the applicant or the owner of the property.

The applicant and her witnesses also testified regarding an inspection conducted by the gas company in which access to the rental unit was initially refused. The applicant and her female witness testified that they were told by the gas company official who attended the property that the gas leak in the basement suite resulted from those in the respondent's suite leaving the gas stove operating. They testified that the gas company official told them that had this persisted for another hour, any light or electric switch would have triggered an explosion in the building.

The applicant also provided written and oral evidence regarding fights that typically occur in the respondent's rental unit. She said that one of the people living with the tenant used a 2 x 4 piece of wood to break one of the respondent's windows and gain access to the rental unit. The window remains broken; the parties agree that the person who broke the window was incarcerated shortly thereafter.

The respondent testified that he comes home shortly after he is finished work at 6 p.m. and leaves for work each weekday morning at 5 a.m. He testified that he and his guests are quiet and that the noise and disruption is caused by the applicant, her family and pets. He maintained that many of the problems that have occurred during this tenancy arise because the applicant has tried to access his rental unit illegally and in contravention of his rights under the *Act*. He asked that the application to end this tenancy early be set aside to allow him to have the concerns identified in his application for dispute resolution considered at the scheduled February 7, 2011 hearing.

Analysis

Section 56 of the *Act* reads in part as follows:

56 (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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...

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...

In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy.

The applicant's demeanour during the hearing has convinced me of the credibility of the applicant's account of what has transpired during this tenancy. Moreover, her evidence

was consistent with the evidence of the witness who has been staying with her and the co-owner of the property.

Much of the respondent's evidence relied on his assertion that the landlord lacked written documentation to support her account of what has happened. For example, he said that the applicant has not provided any written proof from the gas company to confirm her oral testimony. Similarly, he questioned the number of times that police have attended his rental unit and the reasons for their visits. He also questioned the timing and placement of calls by officials from the Income Assistance Office regarding Intent to Rent forms he completed for some of those who have been staying with him.

What does not emerge from the respondent's oral testimony or any supporting testimony on his behalf is any adequate response to the applicant's assertion that she and her family have legitimate reasons to be concerned for their safety and well-being should this tenancy continue.

The applicant and her female witness gave convincing testimony regarding the effect that the basement tenant(s) are having on the applicant's family. They testified that the noise and disruptive behavior have reached the point where the applicant and her family now have to sleep together in the applicant's living room to reduce the noise from the basement tenant(s). The applicant and her female witness said that the applicant's children are terrified and the teenaged daughter is now afraid to stay at home without an adult present due to concerns about the behaviours of those in the respondent's suite.

During the hearing we called the co-owner of the property twice to check the accuracy of the respondent's sworn statements with respect to the written requests he had made to inspect the rental unit. I find the testimony of the applicant and co-owner more credible than that of the respondent with respect to the inspection requests. I accept the co-owners' sworn testimony that he posted these notices on the respondent's door in sufficient advance of the scheduled inspections. The respondent has repeatedly refused to allow access to the rental suite and has changed locks in contravention of the *Act* to prevent the applicant and the property owner from gaining access to his rental unit. I have considered this testimony in my determination that the applicant's oral testimony was more credible than that of the respondent.

The applicant's testimony, the testimony of the witnesses who appeared on her behalf, combined with the other evidence, has persuaded me on the balance of probabilities that the applicant has met the standard required to end this tenancy early. I find that the applicant has met the standard required to obtain an early end to this tenancy on the basis of subsections 56(2)(a)(i), (ii), (iii) and (v) of the *Act* and has also met the test established by section 56(2)(b) of the *Act*. I find that the landlord has demonstrated to

the extent necessary that the circumstances described in subsection 56(2)(a) of the *Act* exist such that it would be unreasonable or unfair to the applicant to wait further for an Order of Possession to be issued regarding her notice to end tenancy under Section 47. I allow the application for an early end to this tenancy and issue a 2 day Order of Possession.

Conclusion

I allow the application for a notice to end this tenancy early. I order the tenancy to be at an end effective today, February 3, 2011. I find that the applicant is entitled to an Order of Possession effective two days after service on the respondent. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

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*.