



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: ET, FF.

Introduction:

This hearing deal with an application by the landlord seeking to end this tenancy early pursuant to section 56 of the *Act*. Both parties appeared and gave testimony..

Issue to be Determined:

Has the landlord proven that there is cause to immediately terminate this tenancy without notice?

Background and Evidence:

A copy of the tenancy agreement was in evidence. The landlord testified that this tenancy began on June 1, 2009 for rent of \$1,100.00 and security deposit of \$550.00.

The landlord is seeking to end this tenancy early based on an alleged threat made by an occupant living with the tenant. The landlord stated that this occurred during a meeting held in the laundry room during which the landlord and tenant were having discussion about the landlord's concerns regarding the occupant living with the tenant. According to the landlord, the occupant interrupted the meeting by barging in and making verbal and physical threats. The landlord testified that the police were called and told the occupant to leave. The landlord testified that the occupant later agreed to vacate permanently and the locks were changed. The landlord testified that subsequent to this incident, the tenant and the landlord signed a mutual agreement to end tenancy.

The tenant testified that, despite her request that they meet off site to discuss the landlord's concerns about the occupant sharing her suite, the landlord had insisted on holding the meeting in the laundry room outside of the suite where the occupant could clearly overhear what was being said by the landlord. The tenant stated that the landlord made inflammatory and unsubstantiated remarks about the occupant's character. The tenant stated that the occupant did come out to express his objection to what was being alleged, but he did not verbally nor physically threaten the landlord. The tenant testified that, in fact, the parties had ended by going back to their respective suites. However the police later arrived, apparently having been called by the landlord, and the occupant agreed to vacate the unit, after which the locks on the unit were

changed. The tenant testified that the landlord's attitude and conduct influenced her to sign a mutual agreement to end tenancy. The tenant pointed out that the situation has now been defused and there is no urgency warranting an Order of Possession.

Analysis:

In making an application for an early end to the tenancy, the landlord had the burden of proof to show that the tenancy should end based on the tenant unreasonably disturbing other occupants, seriously jeopardizing the health, safety or lawful right or interest of the landlord and placing the landlord's property at significant risk. The landlord would then have to offer proof to satisfy the second test by showing that it would be unreasonable or unfair to wait for a one month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Section 56 provides a remedy that is reserved for situations in which there is a serious measure of urgency, such as a genuine threat of imminent harm or significant liability risk that would warrant immediate termination of the tenancy without any notice first being served. In this instance I find the landlord based the request for an Order of Possession on an alleged incident that occurred on February 6, 2011. However, I find that the situation described by the landlord has since been resolved by: a) the occupant willingly moving out and; b) by the fact that the landlord and tenant subsequently entered in a mutual agreement to permanently terminate the tenancy entirely.

I therefore I find that the landlord's application for an immediate order of possession under section 56 of the *Act* is not supported and must be dismissed. The landlord also made a request for an Order of Possession based on the mutual agreement effective February 18, 2011 based on a fear that the tenant will not vacate as agreed.

I find that, having dismissed the landlord's application, I am not prepared to grant an Order of Possession based on a matter that was not part of the application and is not subject to any dispute between these parties.

Conclusion

I find that the landlord has not met the grounds to end this tenancy early pursuant to section 56 of the *Act* and I hereby dismiss the landlord's application in its entirety.

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: February 2011.

Residential Tenancy Branch