



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

ET and FF

Introduction

The hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, for an early end to this tenancy, and to recover the fee for filing this Application for Dispute Resolution, pursuant to section 56(1) and 72(1) of the *Residential Tenancy Act (Act)*.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Applicant submitted documents to the Residential Tenancy Branch, copies of which were served to the Respondents. The Respondents acknowledged receiving a package of documents from the Applicant. As these documents were served to the Respondents they were accepted as evidence for these proceedings.

The Respondents served documents to the Residential Tenancy Branch. The Agent for the Landlord acknowledged receiving these documents from the Respondent. As these documents were served to the Applicant they were accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord has grounds to end this tenancy early, whether the Landlord is entitled to an Order of Possession on the basis of the tenancy ending early, and whether the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution, pursuant to sections 56 and 72 of the *Act*.

Background and Evidence

The Applicant, who is the Landlord, and the male Tenant agree that this tenancy began on December 01, 2009; that the Landlord, the male Tenant, and the male Tenant's son entered into a written tenancy agreement; and that the written tenancy agreement required the male Tenant and his son to pay rent of \$1,200.00 by the first day of each month.

The Landlord and the Respondents agree that this tenancy was the subject of a dispute resolution hearing on April 07, 2011, over which I presided. It is important to note that at the conclusion of the hearing on April 07, 2011, I set aside a Notice to End tenancy which was based, in part, on the Landlord's belief that the Tenant's had been operating an illegal marijuana grow operation in the rental unit. The alleged marijuana grow operation was not raised at the hearing on April 21, 2011 to support the Landlord's application for an early end to this tenancy.

The Landlord and the Respondents agree that after the hearing on April 07, 2011, I concluded that the female Respondent was an occupant in this rental unit and that she was not a tenant. The parties agree that the Landlord and the Occupant have not entered into a tenancy agreement since the hearing on April 07, 2011.

The Landlord and the male Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the male Tenant on April 08, 2011. The Notice to End Tenancy declared that the Tenant and the Occupant must vacate the rental unit by April 09, 2011. The Notice to End Tenancy indicated that the Landlord was ending the tenancy because the tenant or a person permitted on the property has seriously jeopardized the health or safety or lawful right or interest of another occupant or the landlord and because the tenant has caused extraordinary damage to the unit/site. The Landlord and the Respondents both indicated that they understood that the validity of the Notice to End Tenancy for Cause is not at issue at these proceedings.

The Landlord stated that he is seeking an early end to this tenancy because he is aware that a No Occupancy Order has been posted at the rental unit. The Landlord stated that he has not been given a copy of the No Occupancy Order.

The Occupant stated that a "No Occupancy Order" was posted at the rental unit on April 07, 2011. She stated that the No Occupancy Order prohibits people from entering or occupying the rental unit.

The Occupant stated that the City of Chilliwack employee who signed and posted the Order spoke with her and the Tenant prior to posting the Order. She stated that the City of Chilliwack employee told them they could enter the rental unit for the purposes of packing their belongings but they cannot be inside the rental unit after dark. She stated that he told them to leave the rental unit on regular intervals while they are packing to minimize any risks to their health.

The Occupant and the male Tenant stated that they are in the process of moving their personal belongings to the garage, which is not impacted by the No Occupancy Order. They stated that they are currently sleeping in their car and that they have no intention of living in the rental unit now or in the future, as they are very concerned for their health.

The Agent for the Landlord stated that he believes the Tenant/Occupant are accessing the rental unit during the day but he has no reason to believe they are sleeping in the rental unit.

The Landlord and the Tenant agree that rent has been paid for the month of April of 2011.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant and his son entered into a tenancy agreement with the Landlord and that the female Respondent is occupying the rental unit with the consent of the Tenant.

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

While I accept that a No Occupancy Order has been posted at the rental unit which prohibits the Tenants from occupying the rental unit, I find that I do not have authority to end this tenancy pursuant to section 56(1) of the *Act* simply because a No Occupancy Order has been posted. As the Landlord has not established grounds to end this tenancy pursuant to section 56(1) of the *Act*, I dismiss the Landlord's application for an Order of Possession and an early end to this tenancy.

In an attempt to bring clarity to this tenancy, the Landlord and the Tenant are advised that a landlord has the right to end a tenancy, pursuant to section 47(1)(k) if **“the rental unit must be vacated to comply with an order of a federal, British Columbia, regional, or municipal government authority”**. Both parties are further advised that a landlord must serve a tenant with a One Month Notice to End Tenancy if a landlord wishes to end a tenancy pursuant to section 47(1)(k) of the *Act*.

The Landlord and the Tenant are further advised that a One Month Notice to End Tenancy must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. In other words, if rent is due on the first of May of 2011 and the One Month Notice to End Tenancy is served on May 02, 2011, the Notice to End Tenancy is not effective until June 30, 2011.

Conclusion

As I have determined that the Landlord's Application for Dispute Resolution has been without merit, I dismiss his application to recover the cost of filing this Application for Dispute Resolution.

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: April 08, 2011.

Residential Tenancy Branch