



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 parties appeared at the hearing and gave evidence.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy without notice under section 56 of the Act?

Background and Evidence

The tenancy began on July 1, 2009 and the current rent is \$334.00. A security deposit of \$500.00 was paid. Submitted into evidence by the landlord was a copy of the tenancy agreement, written testimony, copies of reports and communications and photos.

The landlord testified that they were seeking to terminate this tenancy without notice after a recent violent incident in which the tenant's son and other youths committed a break-in and perpetrated violent physical assaults on two individuals, one of whom was a 13-year-old child. The incidents involved baseball bats, bear spray and a knife. The landlord testified that, although the tenant's son was no longer in her custody, he was permitted to be on the premises by the tenant and in fact, the tenant had listed him on her tenant profile updated on March 27, 2011 as a weekend occupant of the rental unit.

The landlord testified that the tenant's son had also been staying in the tenant's unit while the tenant was away attending a live-in program. The landlord testified that the tenant's son and others had apparently gained entry into the unit by compromising the lock to the garage and then cutting a large hole in the exterior wall of the unit and through the drywall. The landlord supplied a photograph of the damage. The landlord gave testimony about other problems with the tenant's conduct and provided a history of concerns with this tenancy.

The landlord is of the opinion that the circumstances involved in this dispute meet the criteria that would warrant terminating this tenancy without notice under section 56 of the Act and the landlord is seeking an immediate Order of Possession under section 56. The landlord pointed out that it would be unreasonable and unfair to the landlord and other residents in the complex to wait for a One-Month Notice to End Tenancy for Cause to take effect.

The tenant did not dispute that her son was involved in the assaults, along with others and did not dispute that her son and others had been responsible for cutting the hole into the unit from the garage. However, the tenant pointed out that she was not the custodial parent and did not give her son permission to be on the premises. With the exception of one incident when her son came late at night with nowhere to go, the tenant testified that she consistently refused to allow her son to visit her in the unit and told him to stay away. The tenant stated that she had no control over anyone who decided on their own to come to the complex. She stated that her son had friends living in other units where he was at liberty to visit. The tenant testified that she was away when her son and his associates cut the hole into her unit and they did this completely without her knowledge and consent. The tenant testified that she reported the damage to the landlord and they have not taken any steps to repair the hole. The tenant testified that her son is being sent out of province to visit his father as of today and if he returns he will be under the guardianship of his grandmother and will no longer be a problem. The tenant stated that she is scheduled to be accepted into a rehabilitation program and hopes to keep her tenancy so that she will have a home where her youngest children can return once she is successful in regaining custody of them..

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 end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and granting the landlord an order of possession in respect of the rental unit.

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:
- 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;

Has 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;
- 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 find that all of the above criteria would be fully met, provided I accept that the landlord has sufficiently proven that incidents in question were caused either by the tenant, or by a person permitted on the premises by the tenant.

While I appreciate that the tenant did not approve of or condone the behavior of her son and I also accept that the tenant's son was not the only person engaged in the conduct, I find that the tenant's son was allowed by the tenant on the property either as an occupant or a guest. I find that this is confirmed by the fact that the tenant had listed her son as a resident on her tenant profile dated March 27, 2011.

Even if I accept the tenant's testimony that, *after* she discovered the damaged wall with the hole in it, she had banished her son, the fact is that he was not banished before he and the others cut away the wall to gain access. This destruction was done while he was still accepted by the tenant as an occasional occupant.

Given the above, and based on the testimony and the evidence, I find that this situation does satisfy the criteria specified in section 56(2)(a) of the Act. Because of the violent nature of the conduct in question, I find that the circumstances also meet the second threshold under 56(2)(b) and I find 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 find that the landlord and other residents have been placed at risk by the actions of a person permitted on the premises by the tenant and the situation therefore needs to be resolved without further delay.

Conclusion

Accordingly, I hereby order that this tenancy is ended and I grant the Landlord an Order of Possession effective Monday August 15, 2011. This order is final and binding. It must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court if necessary.

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: July 21, 2011.

Residential Tenancy Branch