



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlords' application for Dispute Resolution seeking to end the tenancy with the tenants pursuant to section 56 of the *Act*.

The parties and landlords' witness appeared, gave affirmed testimony, were given the opportunity to make oral and written submissions, and to respond each to the other.

Issue(s) to be Decided

Has the tenants' breach of the tenancy agreement, *Act* and regulations been so significant as to entitle the landlord to end this tenancy early without waiting for a notice under section 47 of the *Act* to take effect?

Background and Evidence

This tenancy began on August 15, 2011, according to the landlord, and August 14, 2011, according to the tenant, for the monthly rent of \$850.00 and a security deposit of \$425.00 was paid by the tenants on August 15, 2011. Despite this testimony, the tenancy agreement shows this tenancy began on September 15, 2011.

The landlords' relevant evidence included a statement from the police force, showing they attended the residential property three separate occasions, a written summary of events, and some witness statements.

In support of his application to end this tenancy early, the male landlord testified that since delivery of the 1 Month Notice to End Tenancy, the tenant has uttered threats, which has been reported to the police. Upon query, the landlord stated that there is no police report available and no arrests have been made.

It appears from the landlords' written submissions that problems between the parties arose shortly after the tenants moved in. The problems related to the landlords' concerns about the tenant's son and his pointing a soft foam gun at the landlords' son, according to the statement. The situation escalated into alleged name calling by the tenant's son, as well as the tenant's son tempting the landlords' son with banana products, to which the son was highly allergic, according to the landlords' statement.

The landlord testified that he served the tenants with a 1 Month Notice to end the tenancy on September 19, 2011.

The landlord further submits that on September 19, 2011, his wife attempted to take a shower, but there was no hot water. The next day, according to the landlord, there was again no hot water.

The landlord submitted that due to the hot water tank being in the tenants' rental unit in the basement, the tenant obviously turned the water heater off and then on the next day.

The separate male and female landlord's written submission indicates that the male landlord attempted entry to the rental unit on September 20, 2011, to look at the hot water tank as he considered this an emergency. The male landlord wrote, "this is (male landlord), I'm coming in to look at the plumbing" and then used his key to open the rental unit door.

The landlord submitted that the tenants refused entry and requested a proper 24 hour, written Notice to enter.

Despite the written submissions, the landlord testified that he believed he was entitled to access the rental unit as there was a gas leak, which constituted an emergency.

Upon query, the landlord testified that he did call the gas company, but they would not attend the rental unit until a smell of gas was discovered.

The landlord testified that he did issue the 24 hour, written notice on the 20th of September, by posting on the door, and attempted to gain access the next day. According to the landlord, the tenant refused.

The female landlord testified that the stress of the situation at home has caused her to live temporarily with her children at a friend's home. Upon query, the landlord could not testify as to a specific threat which was allegedly uttered by the tenant.

In response, the tenant submitted that due to the landlord's actions, his son does not live with him anymore as they have made it too uncomfortable to for his son to play in the back yard.

As to the issue of the hot water tank, the tenant submitted that the landlord lied to the attending police officer and made up a story about there being a gas leak. The tenant submitted that the police officer informed the landlord that the proper response was to call the fire brigade and gas company.

The tenant submitted that there was no emergency and would not allow the landlord access to his rental unit on September 20, 2011, without a proper, written 24 hour notice submitted in accordance with the Residential Tenancy Act (the "Act"). The tenant

submitted that the Notice was posted on the door on September 20, 2011, eventually after the attempted entry by the landlord, and that he offered access to the landlord 24 hours after the deemed delivery day, 3 days after posting. However the landlord did not want to enter the rental unit at that time.

The tenant submitted that the police were called three times, but that two of the visits were as a result of the tenants' calls. The tenant denied uttering threats.

The affirmed testimony and supporting evidence of the Landlord is that the Tenant is putting the health, safety and lawful rights of other residents and the Landlord at risk, and has significantly interfered with and unreasonably disturbed other occupants and the Landlord.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed and considered all relevant evidence; however, not all evidence and testimony has been specifically mentioned in this Decision.

I deny the landlords' application as I find that the landlords have not met the test required under section 56 of the *Act* to end this tenancy early.

Section 56 of the *Act* is an extraordinary remedy which grants the Director authority to end a tenancy without a notice of end tenancy if sufficient cause is established and the landlord demonstrates that it would be both unfair and unreasonable to allow the tenancy to continue until a one month Notice to End Tenancy under section 47 would take effect.

I find that all the stated reasons for an early end to the tenancy brought forward by the landlord can be addressed by issuing notices under sections 46 or 47 of the *Act* and then filing an application for Dispute Resolution based on those notices.

The landlord has not provided any compelling evidence or reasons to demonstrate that it would be unreasonable or unfair to the landlord to wait for a notice or hearing for Dispute Resolution under section 46 or 47 to take effect.

In reaching this conclusion, I was persuaded by the landlords' contradictory testimony and evidence. For instance, both landlords' individual written statements as well as their witness' statement, who accompanied the landlord on September 20, 2011, to enter the rental unit, stated that the landlord attempted access to the rental unit for the purpose of inspecting the plumbing or hot water tank. Yet in testimony, the landlord stated he believed there was a gas leak and therefore an emergency situation. I find the clear contradiction caused me to doubt the landlord's credibility.

I find the testimony and evidence leads me to conclude that the landlord breached section 29 of the Act by attempting access to the rental unit on the day in question and that the tenant was within his right to deny access to the landlord.

Conclusion

I have denied the landlords' application and **dismiss it without leave to re-apply**. I have determined that the landlord has not demonstrated that it would be unfair or unreasonable for the landlord to wait for a notice to end tenancy to take effect under sections 46 or 47 of the *Act*.

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: October 05, 2011.

Residential Tenancy Branch