



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application for an early end of tenancy and an Order of Possession. The tenant did not appear at the hearing. The landlord testified that he personally served the tenant with the hearing package on October 3, 2011 in the presence of a witness. The landlord's witness was in attendance at the hearing. I was satisfied the tenant was served with notification of this hearing and I proceeded to hear from the landlord without the tenant present.

As a matter of record, two witnesses were present at the commencement of the hearing; however, I was unable to hear one of witnesses due to an extreme level of background noise coming from the witness' telephone line. That witness was muted during the majority of the hearing so that I could hear from the other parties. When I called upon the witness to testify she was still connected to the teleconference call but I could not hear her. Therefore, this decision is based upon the testimony of the landlord and one of his witnesses.

Issue(s) to be Decided

Has the landlord established that this tenancy should end early and the landlord should be granted an Order of Possession under section 56 of the Act?

Background and Evidence

The tenant and a roommate began residing in the basement suite of the residential property in May 2010. The landlord acquired the property in May 2011 and new tenants began occupying the upper level shortly thereafter. The roommate moved out August 30, 2011; however, the tenant remained in the rental unit. The rent was paid for September 2011 but rent was not paid for October 2011.

Both the landlord and the roommate, who appeared as the landlord's witness, submitted that the tenant apparently suffers from mental illness and that she is difficult to communicate with. The landlord submitted that there have been numerous disputes

between the tenant and the upper tenants concerning laundry, parking, extremely loud music, and missing items from the garage. In addition, the tenant turned off all the breakers in the house for a couple of days, lit approximately 30 candles, and turned the breakers back on only when the police were attended the property.

The landlord claimed that the police have been called 10 times to the property over the past two months. The landlord could not produce police report file numbers and explained that the upper tenants had called the police. In the details of dispute the landlord states the tenant tried to attack other tenants and "we called the Vancouver Police but they couldn't do anything." During the hearing, the landlord did not provide verbal testimony with respect to an attack.

The tenant's former roommate confirmed that she was a witness to dispute between the tenant and the upper tenants concerning parking and laundry issues. The roommate also testified that she witnessed the landlord informed the tenant that she would have to move out when the roommate moved out.

Analysis

Section 56(2) of the Act permits a Dispute Resolution Officer to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied that:

(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.

[my emphasis added]

The landlord bears the burden to prove the tenant has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. The burden is high as this provision is intended to apply in the most severe circumstances.

The landlord's detailed account of the tenant turning the breakers off in the house satisfied me that the police attended the property on that occasion and spoke with the tenant. However, in the absence of police file numbers, police reports, or a detailed description as to events or the dates of other police visits I find there is insufficient evidence of numerous police visits to the property or the tenant's behaviour was the reason for the police visits. Therefore, I find the landlord's submission concerning police visits to be largely unsubstantiated.

Further, I found the landlord's failure to mention an attack on other tenants during the hearing to be inconsistent with the statement he made on the application. Surely, an attack on another tenant would compel the police to take action yet the landlord indicated on the application the police "couldn't do anything". Therefore, I am not satisfied that there has been an attack on another tenant.

In light of the above, I find the landlord has not satisfied me that an order to end the tenancy early is warranted.

Conclusion

The landlord's application for an early end of tenancy and Order of Possession is dismissed.

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 13, 2011.

Residential Tenancy Branch