



Dispute Resolution Services

Page: 1

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 pursuant to section 56 of the Act?

Background and Evidence

The tenancy began approximately 3 years ago and rent is \$400.00.

The landlord testified that the tenant had been charged with uttering a threat and was now under bail conditions to stay away from the unit and the landlord. The landlord testified that the tenant was found to be in possession of guns and there was an allegation of fraud with respect to the landlord's mail. The landlord testified that the tenant had also withheld his rent and only provided the landlord with a post-dated cheque for September and no rent at all for October. The landlord testified that he did not actually witness the offending conduct, but heard accounts from other residents about what was said and done. The landlord stated that there is a fear created by the continuing of this tenancy and the landlord seeks an Order of Possession .

The tenant testified that, although he has been charged based on one other occupant's allegations, he has not been found guilty of any crime. The tenant testified that he has lived in the complex for 3 years without incident prior to the recent problems and never caused any disruption before now. The tenant testified that the landlord had recently barged into his home and used racial slurs in communicating with the tenant. The tenant testified that the guns alluded to in the charges were only "BB guns" and that he is confident that his bail conditions will be lifted in mid October when he appears in

Court. The tenant feels that it would be unfair to abruptly terminate his tenancy on the basis of unproven transgressions.

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.

Based on the testimony of the landlord and the evidence, I find that there was insufficient proof submitted by the applicant landlord to verify that this situation would satisfy the criteria specified in section 56(2)(a) of the Act. I find that the tenant has been ordered to stay away from the unit, and, should he breach this condition, the landlord has the option of contacting police, which will result in the tenant being incarcerated.

This factor would eliminate the urgency to immediately end the tenancy without Notice. The landlord could also issue a One-Month Notice to End Tenancy and pursue that option to end the tenancy if he feels the criteria would be met.

I find that the circumstances do not sufficiently meet the second threshold under 56(2)(b) and I find it would not 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.

Conclusion

Given the above, I hereby dismiss the landlord's application for an Order of Possession.

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