



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was scheduled in response to the landlord's application for Dispute Resolution, in which the landlords have applied for an Order of Possession on an Early End to Tenancy and to recover the filing fee paid for this proceeding.

The landlords stated that the application and Notice of hearing was given in person to the tenant on September 26, 2011. The tenant confirmed she had received them

The landlord testifies she did not receive the tenants' evidence package. The tenant provided no evidence to show this had been served on the landlord. Consequently the tenants' evidence has not been considered.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to end the tenancy early and gain an Order of Possession on the basis of his application pursuant to section 56 of the *Act*.

Background and Evidence

This tenancy started on either September 22 or September 23, 2011 for a fixed term of three months. Rent for this unit was agreed at \$1,350.00 each month which is due on the first of each month.

The landlord seeks an Early End to Tenancy as she claims the tenant or her guests or roommates have caused disturbances to the neighbours by fighting, screaming and yelling, a constant stream of people coming and going all hours of the day and night and by causing damage to the front window which has been smashed. The landlord states she thinks the tenant and or her roommate are operating illegally in the sex trade and doing drugs on the property.

The landlord testifies she has a business she runs from the rental property and her clients are frightened to come to have their nails done, her staff are scared to come to work and a contractor employed to carry out some repairs of the unit will not work in the unit because of the tenants and her guests behaviour.

The landlord testifies she had an agreement with the tenant that she could run her nail salon out of the rental unit and enter the unit to get supplies. She states whenever she enters the unit the tenant or her roommate freak out and she has seen the tenant sleeping in the living room. The landlord testifies she has had to call the police twice and they advised her to seek an Early End to Tenancy. The landlord testifies the tenant has not offered to repair the window and states she told her that if she wants to remain she must remove her two roommates from the property.

The landlord requests an Order of Possession for October 09, 2011 in order to give the tenant time to find alternative accommodation.

The landlords witness is a neighbour of the rental unit. The witness testifies that since this tenant moved into the unit he has experienced a lot of traffic in and out of the house with some visitors staying for only a few minutes, vandalism to the house, noise and arguments

at the house when he saw a man screaming outside the house and throwing things at the house.

The witness testifies he saw someone trying to break into the landlords RV parked at the rear of the house. He states they were unsuccessful and then entered the house through the back door. He states he did not call the police but did call the landlord to inform her. The witness states he is concerned for the neighbourhood. The witness testifies the tenant has loud parties and he has seen people drinking outside the front of the house.

The tenant cross examines this witness and asks does he live at the front or rear of the rental house. The witness replies that he lives at the back of the house. The tenant asks the witness how he can see what is going on in her yard. The witness replies he was outside in his backyard when he saw someone attempt to break into the landlords RV and then go into the backdoor of her unit.

The tenant testifies this witness could not see her back door from his property as the landlords RV is in the way and the back yard is gated.

The tenant disputes the landlords' claims. The tenant testifies that the landlord was supposed to remove her nail business from the property after she moved in but the landlord failed to do so and has continued to enter the unit whenever she wants without any notice or prior warning. The tenant testifies when she moved into the property it still contained the landlords' belongings and had not been cleaned. She states she agreed to clean the unit and remove the landlords' belongings for a reduction in rent. The tenant states the front window is a double paned window which already had a crack in it when she moved in. The tenant does not dispute that a fight occurred between her two roommates and the male roommate throw a rock at the window which did shatter it. The tenant states she called the police to have him arrested and also called the landlord to inform her that the window was broken. The tenant states this was the correct thing to do in this circumstance. She states this male roommate is now in custody and will no longer be living at the rental unit. The tenant testifies she has offered to pay for the window and got a quote for \$65.00 but the landlord has not yet told her to repair it.

The tenant testifies that the landlord accuses her of being a hooker and drug addict and she denies both accusations. The tenant states it is the landlord that causes a scene and creates animosity every time she lets herself into the unit and it is the tenant who has to call the police to have the landlord removed. The tenant testifies she does have visitors to her unit including her roommates' social worker who generally only stays a short time.

The tenant testifies the landlords' mother also issued threats to her roommate who is only 17 years old. The tenant testifies she rented this unit as her home and the landlord cannot continually enter her home without notice and reason to do so and cannot run a nail salon out of her home.

Analysis

Section 56(2) of the *Act* authorizes me to end a tenancy earlier than the tenancy would end if Notice to End Tenancy were given under section 47 of the *Act* and grant an Order of Possession for the rental unit if the tenant or persons 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I find that the landlord has provided inconclusive evidence, pursuant to section 56 of the *Act*, to show that the tenant has engaged in an activity which would warrant an early end to the tenancy. The tenant agrees the window was broken when an altercation took place between her roommates and this male roommate is now in custody and will not be living at the rental unit. I further find the landlord has provided no evidence to show that the tenant did not offer to have the window replaced.

I find the landlord has agreed she has entered the rental unit without notice and I find this has caused altercations between them and I find the landlord must take some responsibility for this as the *Residential Tenancy Act* does not allow a landlord to enter a rental property without the required 24 hours written notice stating the time date and reason for entry and in doing so the landlord has provoked the altercations between herself and the tenant.

I find the landlords witness's testimony that he has seen guests of the tenants attempting to break into the landlord RV has not been substantiated with any evidence particularly when the tenant has contradicted his testimony and challenged him on his view of her yard. When a party's evidence is contradicted by the other the party making the claim must provide corroborating evidence to support their claim and in this instance the landlords and her witness have failed to do so.

Consequently, I am not satisfied that an Early End to Tenancy is called for in this instance and it would not be unreasonable or unfair to the landlords to wait for a Notice to End Tenancy under section 47 (landlords notice: cause) to take effect.

Conclusion

The landlord's application for an Early End to Tenancy is dismissed without leave to reapply and the tenancy may continue at this time. As the landlord has been unsuccessful with her application she must bear the cost of filing her own application.

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