



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 an application by the landlord for an order ending the tenancy early and an order of possession. Both parties attended the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

The landlord stated that he is the primary tenant on the tenancy agreement and that the tenant is his roommate to whom he has sublet a room to and with whom he has a signed 'agreement to rent' with.

The landlord stated that the tenant verbally agreed when he entered into the tenancy that he would not smoke in the rental unit but shortly after he moved in he started smoking in his room. The landlord stated that the second hand smoke is a danger to his health and that he has submitted a doctor's note reflecting this. The landlord acknowledged that the 'agreement to rent' does not specify that there is no smoking in the rental unit. The landlord believed that his email messages between he and the tenant regarding not smoking in the rental unit was sufficient to uphold the early end of tenancy and a reflection that the rental unit was non-smoking.

The landlord stated that although noted on this application, it was after he filed for dispute resolution that the tenant started smoking crack cocaine in the rental unit and that he could not verify if the drug use had started prior to October 25, 2011. The landlord stated that over the past few weeks he has called the police to attend 4 times because of this and that on 2 occasions the police have removed crack pipes from the tenant's room. The landlord stated that in the past 10 days the tenant has smoked crack cocaine in the rental unit on 3 separate occasions. The tenant admitted to smoking cigarettes and crack cocaine in the rental unit but stated that he now goes outside the rental complex to smoke cigarettes and drugs. The tenant stated that he was willing to

have the police come and check his room to verify that there are no drugs in the tenant's possession.

The tenant stated that on September 19, 2011 he sent a proposal to the landlord with suggestions on how they could improve their relationship and also stating that he would vacate the rental unit November 30, 2011. The tenant stated that he and the landlord then talked things over and the landlord agreed with the tenant remaining in the rental unit. The tenant stated that he and the landlord did not sign a mutual agreement to end tenancy.

The tenant in this hearing agreed to vacate the rental unit November 30, 2011 at 1:00PM however the landlord did not agree to this. The landlord stated that he wants the tenant removed as soon as possible and is seeking an order of possession.

The landlord stated that the tenant has caused damage to the rental unit, is very unclean and that significant repairs will be required when the tenant vacates. The landlord stated that he will file a claim in the future to recover any costs associated with damage to the unit as a result of this tenancy.

Analysis

Section 56 of the Act states that a landlord may 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 for cause under Section 47. Upon receipt of such an application, the director may make an order specifying an earlier date on which a tenancy ends and the effective date of an order of possession for the rental unit only if the director is satisfied that certain conditions exist. These conditions are listed in Section 56(2) of the Act.

In the present case the landlord has applied for an order ending the tenancy early on the basis that the tenant has seriously jeopardized the health and safety of the landlord, put the landlord's property at risk, adversely affected the quiet enjoyment of the landlord, caused extraordinary damage and knowingly gave false information to a prospective tenant or purchaser.

This application relates to the tenant smoking cigarettes and crack cocaine in the rental unit however the 'agreement to rent' does not specify the rental unit as non-smoking. It is recognized that the landlord is and has been affected by the tenant's cigarette smoke however the tenant is not in breach of the 'agreement to rent'.

In regards to the tenant smoking crack cocaine in the rental unit, at the time of the application the landlord could not verify if in fact the tenant was doing so, therefore prior to October 25, 2011 this was not an issue.

It must also be considered that after the tenant sent the landlord his September 19, 2011 proposal that the landlord agreed to allow the tenant to stay longer in the rental unit, bringing in to question the severity of the allegations and matters at hand.

The issues related to damage to the rental unit are not a part of this application and therefore will not be ruled on.

I am not satisfied based on the evidence before me that the landlord has not proved its case and is entitled to end the tenancy early and obtain an order of possession.

The tenant in this hearing did provide the landlord with notice that he would vacate the rental unit on November 30, 2011.

Conclusion

The landlord's application to end the tenancy early and obtain an order of possession is dismissed without leave to reapply.

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: November 8, 2011.

Residential Tenancy Branch