



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in repose to the landlords' application for an Early End to Tenancy and Order of Possession.

The tenants and landlords attended the conference call hearing although the tenants did not dial into the hearing until 9.26 am. The parties gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and the landlords provided evidence to the tenants however the landlords have testified that they did not receive the tenants' evidence. As the tenants have provided no proof of service of this evidence to the landlords, the tenants' documentary evidence has not been considered in this decision. All other evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the landlords entitled to end the tenancy early and gain an Order of Possession on the basis of their application to end the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

The landlords testify that this fixed term tenancy started on April 03, 2012. Rent for this unit is \$2,700.00 per month and is due on the first day of each month in advance.

The landlords testify that every interaction with the tenants has ended badly due to the tenants' belligerent behaviour, threats and foul language. The landlord testifies that the tenants brother is often at the tenants house and has been seen working on vehicles on the driveway with two other men. This brother of the tenant is also aggressive and intimidating towards the landlord.

The landlord testifies that on the occasion when the City inspector came to the property to meet with the landlords concerning the basement suite the tenant DA attended with the bi-law enforcement officer and the landlords. The tenant was aggressive towards the bi-law officer and wanted him to give the tenant a copy of the report which the bi-law officer had told the tenant he could not do. As they left the basement suite the bi-law officer and the landlord VP went ahead and the tenant DA began swearing at the landlord GS talking about the landlords scrotum and what objects the tenant would like to insert in the landlords anus. The landlord testifies that he found this behaviour to be threatening and aggressive. As they left the building the tenant got into his car and shouted at the landlord VP telling her to go back to Russia you fucking bitch. The landlord testifies that the landlords were very upset by the tenant's behaviour and the bi-law officer was visibly shaken.

The landlord testifies that a previous hearing has taken place where the tenants had complained about the condition of the basement, the landlords were ordered to inspect the basement with the tenants. The landlord testifies that they made an appointment with the tenants and the tenant DA's brother showed up as the tenants' agent. The landlord testifies that on entering the basement they found a large pile of dog feces on the floor which the tenant's brother kicked away as the landlord took photographs. The landlord has provided these pictures in evidence. The landlords deem these actions by the tenants of leaving dog feces for the landlords to find to be harassment.

The landlord recalls an incident when the landlord had made an appointment to meet with the tenants to do the move in condition inspection. When the landlord VP arrived at the rental unit the tenant slammed the door in the landlords face. Another inspection had to be arranged a month later after the tenants had done their own inspection. The issues the tenants raised were discussed and the tenants took offense at anything the landlords asked them concerning the tenants' inspection details.

The landlord testifies that the tenants wanted to rent the basement suite but the landlords testify that they could not allow this as the basement suite can only be rented if the landlord is living in the property. The landlord testifies that at that discussion the tenant DA started to make tenancy related threats such as they were going to damage the house and would not pay rent. These threats were followed by physical threats, swearing, posturing and nasty name calling. The tenant blocked the landlords' exit from the unit and then started yelling at the tenants to get the fuck out of his house.

The landlord VP testifies that she had sent a letter to the tenant requesting rent and giving a date and time she would either collect rent or asking for alternative arrangements. The landlord testifies that she went to the rental unit with her baby and walked to the front door. The tenant's brother and two other men were working on the tenant's truck on the driveway. The landlord testifies that the tenant's brother said what are you doing here you fucking bitch and when the landlord told him she was there to see the tenant the tenant's brother kept swearing at her and telling her to get the fuck out of the property.

The landlord testifies that she continued to knock on the front door but no one answered. The landlord testifies that as she was walking back to her car she saw the car repairs and oil on the driveway so decided to take photographs. The tenants brother went crazy and tried to grab the landlords hand demanding the camera and swearing that he was going to break the camera. The landlord testifies that she ran for her car with her baby and drove to the police station where she reported this incident. The landlord has provided a police file number and name of the attending constable.

The landlord testifies that the tenants had lied about the reason they left their previous rental unit. The landlord went to the previous rental unit and found that it had not been demolished as stated by the tenants. The landlord VP testifies that while she was at the tenants' previous rental unit the landlord found the tenants brother lived there. At that time the tenants' brother threatened the landlord with an iron bar. The tenant testifies she called the police again and the tenant turned up and started to scream at the landlord in front of the police.

Due to the tenants and his brothers threatening behaviour the landlords seeks an early end to this tenancy and an Order of Possession.

The tenants' testify that in regard to the day the bi-law officer came to the unit. The officer arrived early so the tenant showed the officer around the unit. The landlord VP came in and started to show tenancy papers to the officer. The officer clearly did not want to see them and told the landlord this. The tenant states he told the landlord to leave the bi-law officer alone.

The tenant testifies that they went outside and the other landlord was there. VP came out and started saying to the tenant that she was going to have his truck towed away as he was not allowed to do work on it. The tenant testifies that the bi-law officer told the landlord that they could not tow the tenant's truck and he is allowed to do repairs on his own truck. The tenant testifies that there was no swearing or vulgarities.

The tenant refers to the incident between the landlord and his brother. The tenant testifies that the landlord had no right to go to the tenant's brother house and his brother was entitled to defend himself and his property. The tenant agrees his brother did pick up an iron bar but states he did not threaten the landlord with it. The tenant states his brother has a right to ask the landlord to leave his property as it has nothing to do with the tenancy. The tenant testifies that if an assault had taken place the tenant's brother would have been arrested by the police officer attending.

The tenant disputes all the landlords' claims concerning the incident between his brother and the landlord VP on rent day. The tenant states that it was the landlord who became belligerent towards his brother and it was his brother who called the police. The tenant testifies that his brother just asked the landlord not to take pictures of him and his friends and his brother did not assault the landlord.

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.

In this matter, the landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist to end the tenancy early. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

In this matter I find it comes down to the word of one party against that of the other and therefore the burden of proof is not met. The landlords' have provided police file numbers but no police report and have not provided any witness statements or witnesses such as the bi-law officer to confirm their testimony. The landlords have provided photographs showing dog feces but no evidence to show this was intentionally placed in the basement by the tenants and photographs of the tenants brother and two men working on a vehicle, however no photographs of the tenants brother approaching the landlord.

Consequently, I find that the landlords has provided insufficient evidence, pursuant to section 56 of the *Act*, to show that it would be unreasonable or unfair to the landlord to wait for a Notice to End Tenancy under section 47 of the *Act* to take effect and the tenancy may continue at this time.

The tenants have declared that they have found another property and will be moving on or before August 01, 2012. As the relationship between the parties has become difficult I strongly suggest the parties have minimal contact and restrict their contact to matters pertaining to this tenancy only in circumstances which cannot be dealt with by telephone.

Conclusion

The landlords' application for an Early End to Tenancy 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: June 21, 2012.

Residential Tenancy Branch