

## **DECISION**

Dispute Codes      ET, FF

### **Introduction**

This is an application filed by the Landlord for an early end to the Tenancy and to obtain an order of possession and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing and evidence packages, I am satisfied that both have been properly served as deemed under the Act.

### **Issue(s) to be Decided**

Is the Landlord entitled to an order for an early end to the Tenancy?

### **Background, Evidence and Analysis**

Section 56 of the Residential Tenancy Act speaks to an application for an order ending tenancy early. It states,

#### **Application for order ending tenancy early**

56 (1) A landlord may make an application for dispute resolution to request an order

(a) 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

(b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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.

(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.

The Landlord states that the Tenants assaulted her and have made threats against other Tenants on the rental property. The Tenants dispute this stating that no assaults or threatening have occurred. The Landlord states that a report was filed by the police and that the allegation of assault is pending a review by the crown. The Landlord has provided two witnesses for the threatening (the basement Tenants) who have stated that there has been ongoing excessive noise issues, proper disposal of garbage and that the Tenants are turning the electrical breakers on and off for the basement Tenants. The Tenants have emphasized that no assaults or threatening have been made to the Landlord or the other Tenants.

The onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as she has made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find that the testimony provided by the Landlord's witnesses is not relevant or helpful in determining

if an assault or threatening took place. The witnesses could not provide any details of a threatening. The Landlord's claims are in dispute by the Tenants. Both parties have given testimony that a police officer was present during the alleged assault, but that no charges have been laid and the Landlord's complaint is pending a review. No actions were made by the police. I find that there is insufficient evidence to support the Landlord's claims. The Landlord's application for an early end to tenancy is dismissed.

Conclusion

The Landlord's application 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: July 06, 2012.

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Residential Tenancy Branch