

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened in response to an application by the Landlord for an early end of tenancy and an Order of Possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also applies for recovery of the filing fee.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on July 1, 2012. The Landlord states that the Tenants did not start moving into the unit until July 6 and that from that point forward, other tenants started to make complaints of numerous people and noise. The Landlord provided letters from five other tenants in relation to their concerns and these letters indicate that the tenants believe that drug trafficking and prostitution are occurring out of the unit. The Landlord states that other tenants have observed exchanges of money and small bags being thrown out to people for the units window. The Landlord states that since the Tenants moved in drug paraphernalia including vials and needles are being left in the building. The Landlord states that the back door of the building that is never used is also now being propped open to allow people in. The Landlord states that the noise and traffic occurs all day and night and that the police have been called in four times over noise. The Landlord supplied copies of police occurrence reports as evidence. The Landlord states that a one month notice to end tenancy for cause has been served on the Tenants in July 2012 however the Landlord states that it would be unfair to other tenants to wait for a month for this notice to take effect as these other tenants are losing

sleep and missing work due to the noise in the middle of the night. The Landlord states that tenant safety is also affected and because the Tenants are letting people into the building who are on drugs, there is concern about the possibility of danger as the Landlord does not know how these people will react if confronted by other tenants. Witness letters indicate that the other tenants are afraid for their safety and that the visitors to the unit have become annoyed or irate that other tenants are watching them. These tenants indicate a fear that matters will escalate with drug related violence in or around the building and that drug users in the Tenant's unit will start a fire.

The Tenants state that no trafficking or prostitution is occurring from their unit and that it is common to see prostitutes in the neighbourhood. The Tenants state that they were having difficulties moving their belongings into the unit as the movers did not show up and the Tenants had to move their belonging to the unit in carts. The Tenants state that they had many people helping them with their move because of this issue with the movers. The Tenants state that there is no drug paraphernalia in their unit that is clean and spotless. The Tenants state that they are both on methadone programs and are not using any other drugs. The Tenants state that one of the Tenants has cancer is and is and out of the hospital and that while the Tenants are agreeable to moving out of the unit, they require more time.

Analysis

Section 56 of the Act provides that a landlord may make an application to end a tenancy earlier than it would end if the landlord issued a 1 Month Notice to End Tenancy for Cause and obtain an Order of Possession in certain circumstances. It is not necessary for the landlord to issue a 1 Month Notice; however, the landlord must show that:

- (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.

Without making a determination on whether the Landlord has provided sufficient evidence to find that the Tenants or their guests have acted in a manner that would justify an end to the tenancy, I find that the Landlord has failed to provided sufficient evidence to justify an earlier end to the tenancy than would otherwise be available under a one month notice to end tenancy for cause. I do not find that other tenants' loss of sleep to be a significant factor in determining reasonableness or fairness of an early end and while there are indicators that the other tenants are feeling fearful, no evidence was provided that any violence or threat of violence has occurred to date. I therefore find that the Landlord is not entitled to an early end of tenancy and I dismiss the Landlord's application.

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 30, 2012.

Residential Tenancy Branch