



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to end the tenancy early, obtain an Order of Possession, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should this tenancy be ended and the Landlord be issued an Order of Possession?

Background and Evidence

The Agent affirmed he served the Tenant with copies of the Landlord's evidence on July 26, 2012 at 10:30 a.m. when he slid the documents under the Tenant's door in the presence of another tenant D.M. The Landlord submitted into evidence a copy of a witness statement which was created on July 23, 2012 at 12:15 p.m. by the tenant D.M. who allegedly witnessed this document being served to the Tenant as evidence.

The Tenant affirmed that he did not receive evidence from the Landlord in any form. He did however confirm receipt of the Landlord's application for dispute resolution and the notice of dispute resolution documents.

The parties agreed they entered into a written month to month tenancy that began on May 1, 2012. Rent is payable on the first of each month in the amount of \$495.00 and the Tenant paid \$200.00 as the security deposit.

The Agent submitted that the rental unit is a rooming house with 16 rooms, a shared kitchen and bathroom. He stated that the Tenant was originally brought in to assist the building manager doing odd jobs and security duties as caretaker and was never responsible for rents. Then on July 6, 2012 the Tenant was issued a letter advising him that his services as assistant manager or caretaker were no longer needed and he was issued a 1 Month Notice to end his tenancy effective August 31, 2012.

The Agent asserts that this Tenant continues to act as a manager. The Agent alleged that the Tenant has torn down no trespassing signs from the building; is involved in police investigations; has threatened the Agent; has trespassed on the Agent's personal residence; is letting drug trade people into the building; took off safety locks from doors; and caused one tenant with a baby to move out. The Agent alleged that it is difficult to re-rent the rooms as the Tenant comes up behind the Agent when he is showing the rooms and says inappropriate things like "you don't want to live in this infested building". He also alleged that the Tenant threatened him.

The Agent advised that a 1 Month Notice was issued because they need the rental unit for the new manager. He stated that the Tenant is letting his son into the building and other previous tenants who have been told to stay away.

The Tenant clarified that he moved into the rental unit May 1, 2012 and the next day the Agent approached him and asked if he wanted to become the caretaker to clean and vacuum; reset breakers and fire alarms; and conduct general security duties. He acknowledged that he has never been involved with collecting or determining rent and that he returned all keys to the Agent after he received the letter to terminate his caretaker position.

The Tenant refuted all of the allegations made against him by the Agent. He stated that neither he nor his son have a criminal record and questioned the Agent if he had a criminal record, which the Agent refused to answer. The Tenant advised that he has not threatened the Agent, and in fact he has text messages on his phone which prove the Agent has threatened him. He stated he was not a heroin addict and he does not continue to represent himself as a manager. The Tenant denies ever discussing rent issues with tenants. He confirmed that during his time as caretaker he removed some metal brackets from the doors because they were installed incorrectly. He stated he

replaced the brackets with the correct types and installed them correctly to allow the doors to close properly. The Tenant confirmed there have been several police files generated from this building as the relationship between the Agent and numerous tenants has deteriorated.

The Tenant asserts that this application to end his tenancy is the Agent's attempt to evict him prior to his hearing that is scheduled next month to cancel his eviction notice and to deal with his concerns about pests in the building. He stated that this is also in retaliation to the Tenant assisting other tenants in fighting their evictions. He noted that the building has a mice, cockroach, and bedbug problem which the Agent and Landlord are refusing to deal with.

The Owner confirmed he does not have firsthand knowledge of the events or day to day operations at the rental unit; however he is kept informed by his Agent on a regular basis. He stated that they comply with municipal by-laws and had recently passed a by-law inspection which confirms the unit is zoned for 14 units.

Analysis

In making an application for an early end to this tenancy the Landlord has the burden of proving that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord and placing the landlord's property at significant risk, and by proving that it would be unreasonable or unfair to the Landlord or other occupants to wait for a one month Notice to End Tenancy for cause under section 47 of the *Act* to take effect.

Notes on the file indicate that when the Agent filed the application for dispute resolution he was strongly cautioned that he must provide evidence to support a request for an end of tenancy application. It further states that a police file number would not be sufficient evidence.

The application for dispute resolution was filed on July 23, 2012 and entered in the system at 11:56 a.m. I note that the only evidence submitted in support of this application was a police witness statement which was created July 23, 2013 at 12:15 p.m.; after the application was filed. The tenant who filed the witness statement is allegedly the same tenant who witnessed the statement being served upon the responding Tenant to this dispute; however there is no proof from the alleged witness.

Furthermore, the Tenant denies receiving this evidence; therefore, after careful consideration of the foregoing and in accordance with rule # 11.5 of the *Residential*

Tenancy Branch Rules of Procedures, I decline to consider the Landlord's documentary evidence. I did however consider the Owner and Agent's testimony.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord is relying on verbal allegations which have not been substantiated by evidence and have all been disputed by the Tenant. Therefore, I am not satisfied that there may be cause to end this tenancy pursuant to section 47 of the Act, nor do I find it is unfair or unreasonable for a one month Notice to End Tenancy to take effect as there has been insufficient evidence to prove there is a significant risk to the Landlord or another occupant as to warrant the immediate end to the tenancy.

Given the circumstances presented to me during the hearing, I accept the Tenant's explanation that this application was nothing more than a retaliatory action by the Agent in his attempts to end this tenancy before the Tenant's application for dispute resolution could be heard. Accordingly, I find the Landlord's application to be frivolous and vexatious and it is hereby dismissed.

The Landlord has not been successful with their application; therefore I decline to award the Landlord recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's 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: July 31, 2012.

Residential Tenancy Branch