



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 the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that he posted his dispute resolution hearing package on the tenant's door on August 14, 2012. The tenant testified that the landlord handed her his hearing package on August 15, 2012. In either case, I am satisfied that the landlord has served the tenant with his dispute resolution hearing package in accordance with the *Act*.

The tenant confirmed having received the only written evidence the landlord provided with his dispute resolution hearing package. The tenant testified that she placed her written evidence package in the landlord's mailbox on August 22, 2012, two days before this hearing. The landlord testified that he had not received the tenant's written evidence. The tenant's late provision of this evidence to the landlord and the landlord's claim that he never received this evidence is of concern. However, the only substantive document of relevance to the landlord's application for an early end to tenancy was an August 1, 2012 letter from tenants in the other three units in this fourplex rental property was also part of the landlord's written evidence. Although I have reviewed the tenant's written evidence, I give little weight to it other than the August 1, 2012 letter.

Issues(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?

Background and Evidence

This periodic tenancy commenced on October 15, 2010. Monthly rent is set at \$900.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$450.00 security deposit.

The landlord identified the following reasons for seeking an early end to this tenancy without issuing a 1 Month Notice to End Tenancy for Cause (1 Month Notice) in the Details of the Dispute section of his application for dispute resolution:

...Mrs. J has been constantly threatening to all tenants at #####. Her continued verbal assaults on both tenants and their family's & visitors has caused me to receive a letter from tenants stating that they will leave due to unsafe environment. She has assaulted my tenant in #2 physically in last thirty days.

As noted above, the landlord's primary written evidence was a letter signed by five tenants (the other tenants) then living in the other rental units in this fourplex. In this letter, the other tenants reviewed many of the tenant's behaviours and actions they found objectionable. They claimed that the tenant's behaviours were loud and threatening to them and their children and that these behaviours were exhibited on an ongoing basis by the tenant, even at late times of the night. At the conclusion of their letter, the other tenants advised the landlord that unless he took action to have the tenant removed from the building within 30 days, they would all refuse to pay their rent and leave the building.

At the hearing, the landlord testified that the other tenants are scared of the tenant and find her threatening. He said that he did not want to lose good tenants who have been in the building for some time. He said that he has heard the tenant's yelling and screaming when he attends the building. The landlord testified that none of the tenants have submitted written notices to end their tenancies on a specific date as a result of the tenant's actions.

The landlord's witness, one of the tenants in Unit #2 of the building, confirmed that he had signed the August 1, 2012 letter. He gave sworn oral testimony regarding the tenant's behaviours and actions. He said that one of the tenants who signed the letter has moved out for reasons unrelated to the issues identified in the August 1, 2012 letter. He also provided details regarding an incident in which he maintained the tenant had slapped him. Although police were called to investigate this alleged assault, both the witness and the tenant testified that no charges had been laid by the police with respect to this incident. The witness provided undisputed sworn testimony that a restraining order had been initially placed against the tenant, an order that has now been rescinded. The witness said that he and the landlord have tried to work things out with the tenant, but she refuses to change her behaviours and still presents an ongoing threat and problem for tenants in the building, their children and visitors to this building.

The tenant and her witness portrayed a different perspective on the source of the problems in this rental building. They maintained that the other tenants and the landlord have been responsible for many objectionable behaviours. The tenant recounted a series of incidents where her property (including her truck) and her rental unit have been the targets of the other tenants' abuse. She claimed that her tires had been

slashed, truck body damaged, feces had been smeared on her door, etc. She attributed the ill will in the building as an attempt to force her to leave. She denied having threatened others in the building or having used offensive language when children were present. She maintained that the alleged assault was a raising of her hands to protect herself from the landlord's witness.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

Based on the testimony of both parties, their witnesses and my review of the written evidence, I find that the landlord has failed to prove that any of the circumstances described above exist such that it would be unreasonable or unfair to the landlord or other tenants to serve the tenant with a notice to end tenancy under section 47 of the *Act* and wait for that notice to take effect. The landlord produced only one of the signatories of the August 1, 2012 letter, an individual who had clearly had an altercation with the tenant. The circumstances of that altercation are in dispute and all parties agreed that no criminal charges were laid against anyone involved. While it is clear that

there is a high degree of tension in this rental building, I am not convinced by the evidence presented as to who is primarily responsible for that tension and the escalation of behaviours that has occurred. The landlord has not provided satisfactory evidence to demonstrate that anyone has actually vacated the rental property as a result of the tenant's actions, nor does the August 1, 2012 letter advise the landlord that any of his tenants are ending their tenancies on a specific date.

I recognize that the landlord is interested in demonstrating to his tenants that he is actively pursuing a resolution of the concerns expressed by the other tenants in this building about the tenant. However, an application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution. As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlord's application for an early end to this tenancy.

Conclusion

I dismiss the landlord's application with the effect that this tenancy continues.

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: August 24, 2012

Residential Tenancy Branch