



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 the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by three agents for the landlord; the tenant and his advocate.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early and without notice; and to recover the filing fee from the tenant, pursuant to Sections 56, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on September 1, 2000 and is a month to month tenancy with a current monthly rent of \$360.00 due on the 1st of each month with a security deposit of \$150.00 paid.

The landlord submits they had asked the tenant to remove a blind from the balcony in August and that they had contacted some local social service agencies to attempt to help the tenant with this removal but have heard back from those agencies that they have not been able to contact the tenant.

The landlord also submits that they have reason to believe that the tenant is no longer living in the rental unit from various tenant reports and as one of the contract staff had overheard the tenant telling another occupant of the residential property that he no longer lives there. The tenant insists he still lives in the rental unit and he does not recall ever telling anyone that he lives elsewhere.

When the tenant was not taking action on the balcony blind and faced with the reports that the tenant wasn't living there the landlord posted a notice for an inspection on the rental unit which was completed on October 10, 2012. The landlord has provided photographic evidence of the condition of the unit at that time.

Two of the landlord's agents testified that the unit was so packed with things that there was not even a path through the area; that there is no place to sleep or any furniture

that is accessible and the door would barely open. The tenant submits he sleeps on pad that he rolls up every day and that he has a path to kitchen and bathroom. He states that he does not need access to the fridge or stove because he eats canned and prepared foods.

The landlord also noted that last year the parties had a dispute resolution hearing based on the cross Applications with the landlord seeking an order of possession for cause and the tenant seeking to cancel the notice. The parties settled the issue by having the landlord withdraw the notice and the tenant agreeing to clean up the rental unit by October 31, 2011.

The parties agree the tenant did not meet this deadline. The landlord testified that he is unsure what other steps may have been taken up to the point in August 2012 where this agent discussed the blinds with the tenant because the previous landlord's agent responsible has retired and is not available.

Analysis

Section 56 of the *Act* allows a landlord to request an order of possession to end the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (1 Month Notice to End Tenancy for Cause) if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - 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, or
 - 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 rental unit or residential property;
- b) And 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 to take effect.

While I accept the landlord has established sufficient cause to end this tenancy, I find by failing to provide any evidence that they had followed up on the tenant's failure to comply with the previous settlement agreement and knowing about the potential for

these circumstances for over a year it is reasonable that the tenant be given adequate notice to end the tenancy.

Further, while I also accept the landlord has concerns for the health and safety of neighbouring rental units, I find the landlord has not established that there is imminent danger to those other units and in fact the landlord has allowed this to continue since October 2011 and as such, it is not unfair or unreasonable for the landlord or other occupants to wait for a 1 Month Notice to End Tenancy for Cause under Section 47 to take effect, should the landlord decide to issue one.

I also note, however, that tenant should be sufficiently warned that the landlord has full intention of ending the tenancy as soon as possible if the conditions of the rental unit are not immediately brought up to a reasonable health and safety standard.

Conclusion

For the reasons noted above, I dismiss the landlord's Application in its entirety.

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: October 24, 2012.

Residential Tenancy Branch