



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 a landlord's application for an early end of tenancy and Order of Possession. The tenant did not appear at the hearing. The landlord provided registered mail receipts, including tracking numbers, as proof of service the landlord's Application for Dispute Resolution was sent to the named tenant and named occupant via registered mail at the rental unit on October 2, 2012. The landlord affirmed that the landlord's evidentiary material was included with the Application for Dispute Resolution sent to the tenant and occupant.

I heard the tenant does not currently reside in the rental unit as it was used as a marijuana grow operation which was boarded up after a police search; however, the tenant and/or the occupant still have the keys to the mailbox and other parts of the building. The tenant and/or the occupant have been seen watching the building and have entering the building on two occasions. The registered mail has not been returned to the landlord. The landlord does not have any other address of residence for the tenant. The landlord wants to regain possession and control of the unit in order to remediate the damage caused by the grow-operation.

Although section 89 of the Act requires that an Application be sent to the address of residence of the tenant, section 71 of the Act affords me the authority to deem a party sufficiently served even if the requirements of section 89 have not been met. Based upon the landlord's submissions I deemed the tenant sufficiently served with the hearing documents pursuant to the authority afforded me under section 71 of the Act. Accordingly, I proceeded to hear from the landlord in the absence of the tenant.

I have also amended the Application for Dispute Resolution. The landlord named the tenant and occupant in filing this application. As the tenancy agreement names only one tenant and the other person as an occupant I excluded the name of the occupant.

Issue(s) to be Decided

Has the landlord established a basis for ending this tenancy early and should the landlord be provided an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy commenced March 15, 2010 and the tenant paid a security deposit of \$425.00. The tenant is required to pay rent on the 1st day of every month.

On September 26, 2012 the landlord took readings of the hydro meters in the electrical room and noticed the hydro consumption for the rental unit was extremely high compared to other units. The landlord issued a written Notice of Entry for an inspection set to take place at 3:30 p.m. on September 27, 2012. Upon arriving at the rental unit the landlord discovered a dead bolt that had since been installed on the door of the rental unit. The landlord's maintenance staff removed the dead bolt and the landlord entered the unit. Immediately upon entry the landlord discovered plastic taped across the opening of the living room.

The landlord continued the inspection after contacting the police and discovered plastic across the bedroom doors. Inside the bedrooms were numerous marijuana plants, lighting systems, and piping that vented into the storage room above. In the bathroom were several jugs of chemicals and a large plastic garbage can.

The police attended the unit later that evening and after attending the unit the police applied for a search warrant, which was approved. The police returned September 28, 2012 to execute the search warrant.

The City was notified of the discovery in the rental unit. The landlord has been ordered to remediate the rental unit by a certain deadline set by the city.

The tenant did not paid rent for October 2012.

The landlord seeks an immediate Order of Possession in order to regain possession and control of this rental unit in order to commence remediation.

As evidence for this proceeding the landlord provided copies of: the tenancy agreement, including a crime free Addendum; hydro meter readings taken September 26, 2012; the Notice of Entry dated September 26, 2012; the assistant manager's written statement; and, the approved search warrant. The landlord also provided photographs of the rental unit depicting several marijuana plants, lighting systems; venting systems; chemicals and a large garbage can in the bathroom, and plastic over doorways.

Analysis

Section 56(2) of the Act permits a Dispute Resolution Officer to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied 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.

[my emphasis added]

The landlord bears the burden to prove the tenant, or a person permitted on the property by the tenant, has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice to End Tenancy for Cause. The burden is high as this provision is intended to apply in the most severe circumstances.

Based upon the evidence presented to me I have no doubt that this rental unit was actively being used as a marijuana grow operation when the landlord inspected the unit. I am satisfied that the lighting systems and venting systems installed by the tenant, or persons permitted on the property by the tenant, among other things associated to a marijuana grow operation, has put the health or safety of other occupants and the landlord's property at significant risk. Therefore, I find this tenancy must end earlier than the effective date on a 1 Month Notice to End Tenancy for Cause.

I am satisfied that neither the tenant or occupant is currently residing in the rental unit and all that remains are the remnants and damage of an illegal activity for which the landlord now has to remediate pursuant to City bylaws. Therefore, **I grant the landlord's request for an immediate Order of Possession and I order that this tenancy ends upon service of the Order of Possession. The Order of Possession may be served upon the tenant by personal service, posting on the door of the rental unit, or by registered mail sent to the rental unit and it will be deemed served according to the deemed service provisions contained in section 90 of the Act.**

The landlord is authorized to recover the filing fee paid for this application by deduction \$50.00 from the tenant's security deposit.

Conclusion

The landlord has been provided an Order of Possession effective immediately upon service of the Order. The tenancy shall end upon service, or deemed service, of the Order of Possession upon the tenant.

The landlord is authorized to deduct the filing fee paid for this application from the security deposit.

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 18, 2012.

Residential Tenancy Branch

