



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened upon the application of the landlord seeking an Early End of Tenancy pursuant to Section 56.

The landlord attended the hearing. The tenants did not. The landlord gave evidence that he served the tenants with the Application for Dispute Resolution including the Notice of Hearing by way of registered mail. Based on this evidence I am satisfied that the tenants are deemed served with the Application and Notice of this hearing.

The landlord gave evidence under oath.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without giving notice as required by the Act? And, is the landlord entitled to recover the filing fee paid to make this application.

Background and Evidence

The landlord says this tenancy started on September 30, 2012. The landlord says the tenants signed a Tenancy Agreement agreeing that they would not smoke in the rental unit or have pets. The landlord says this is necessary because the landlords' parents suffer from side effects caused by cigarette smoke. The landlord says his mother has a lump in her throat which is being investigated as possible cancer and his father is suffering from the side effects of second hand smoke. The landlord says that despite their agreement the tenants are smoking in the rental unit and they have refused to stop despite the landlords repeated requests. The landlord says they have had to call the police on several occasions because the tenants yell at the landlords but when the police attend the tenants deny yelling at the landlords. The landlord says the tenants in another suite in the home have small children and they too are worried about the second hand smoke. Further, the landlord suspects that the tenants are stealing goods from the rental property and are selling these goods. In evidence the landlords have

submitted a note from the father's physician in this regard and an empty box of Zenhale medication along with a police file number.

The landlord says he too is suffering from the second hand smoke which is causing him to be unable to sleep. This is causing issues with his employment as an Armoured Car Guard a role in which he must be alert as he is in charge of large amounts of monies and carries a gun.

Analysis

Section 56 of the Act says that a landlord may make an application for dispute resolution to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under, section 47 [landlord's notice: cause] or 57.41 [notice to end tenancy: tenant's needs], and
- (b) granting the landlord an order of possession in respect of the rental unit.

And that the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application, either that:

the tenant or a person permitted on the residential property by 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] or 57.41 [notice to end tenancy: tenant's needs] to take effect.

Based on the testimony of the landlord I find that he wishes to end this tenancy because the tenants are smoking in a non-smoking rental unit. 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 for the landlord to serve the tenants with a notice to end tenancy under Section 47 and wait for that notice to take effect.

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: November 07, 2012.

Residential Tenancy Branch