



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") Resolution seeking to end the tenancy with the tenant pursuant to section 56 of the *Act*.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. I note that the listed landlord was represented by his spouse, who provided the testimony due to language difficulties.

The evidence was discussed and the tenant said she had not received the landlord's evidence, which the landlord said was posted on the tenant's door.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the tenant's breach of the tenancy agreement, *Act* and regulations been so significant as to entitle the landlord to end this tenancy early without waiting for a notice under section 47 of the *Act* to take effect?

Background and Evidence

The landlord provided no written tenancy agreement into evidence, although, according to her testimony, there was one.

The tenant denied that there was a written tenancy agreement.

The landlord said monthly rent was \$700.00 and the tenant said the monthly rent was \$650.00.

The landlord said the tenant did not pay a security deposit and the tenant said she paid a security deposit of \$325.00.

The parties did agree that the tenancy began on July 15, 2012.

In support of their application, the landlord said that the tenant is running a prostitution ring out of the rental unit and as proof, submitted online listings which appeared to be for solicitation purposes.

The listings showed two female names, not the name of the tenant, and provided a telephone number. No address was listed.

The landlord testified that her husband called the number listed in the online advertisements and the tenant answered, discussing her rates.

The landlord said that she wanted to report this matter to the police; however, the police would not permit her to make a report as she no longer lived in the upper suite. I note that the upper suite is the address listed by the landlord on their application.

The landlord also submitted a written statement from another tenant in one of the three basement suites, who stated that he did not feel safe with a lot of people coming in and out of the tenant's rental unit.

The landlord said she served the tenant a 1 Month Notice to End Tenancy for Cause on October 15, 2012, but did not supply a copy of the Notice.

In response, the tenant reaffirmed that she did not receive the landlord's evidence and she did not know to which listings the landlord referred. The tenant said that all the landlord's allegations were false and denied that she was engaged in prostitution at all. The tenant said that she lived in the rental unit with her brother.

The tenant said that the landlord has never lived in the upper suite and that she has seen the other tenant who wrote the statement only twice.

Analysis

I have reviewed and considered all relevant evidence; however, not all evidence and testimony has been specifically mentioned in this Decision.

I deny the landlord's application as I find that the landlord has not met the test required under section 56 of the *Act* to end this tenancy early.

Section 56 of the *Act* is an extraordinary remedy which grants the Director authority to end a tenancy without a notice of end tenancy if sufficient cause is established and the landlord demonstrates that it would be both unfair and unreasonable to allow the tenancy to continue until a one month Notice to End Tenancy under section 47 would take effect.

I find that all the stated reasons for an early end to the tenancy brought forward by the landlord can be addressed by issuing notices under sections 46 or 47 of the *Act* and then filing an application for Dispute Resolution based on those notices, although I make no findings as to whether the stated reasons have been established.

In reaching this conclusion, I was persuaded by the landlord's lack of documentary evidence. I do not find that the landlord sufficiently proved that the names listed in the online listings were the tenant. I also did not find the witness statement sufficiently persuasive as the document lacked in specificity as to times, dates or details.

Beyond that, the evidence was disputed verbal testimony

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof, the landlord in this case, cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

Due to the above, I find the landlord has not provided any compelling evidence or reasons to demonstrate that it would be unreasonable or unfair to the landlord to wait for a notice or hearing for Dispute Resolution under section 46 or 47 to take effect.

Conclusion

I have denied the landlord's application and dismiss it without leave to re-apply. I have determined that the landlord has not demonstrated that it would be unfair or unreasonable for the landlord to wait for a notice to end tenancy to take effect under sections 46 or 47 of the *Act*.

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* and is being mailed to both the applicant and the respondent.

Dated: November 14, 2012.

Residential Tenancy Branch