



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application for an early end of tenancy and Order of Possession. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord be provided with an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy commenced in January 2012 and the tenant is required to pay rent on the 1st day of every month. The landlord and the tenant live on the same residential property although they live in separate living units.

The landlord seeks to end this tenancy early due to events that took place on November 28, 2012. The landlord's wife testified to the following:

- Upon opening the garage the landlord's wife observed the tenant using "big machinery".
- When the landlord's wife asked the tenant what he was doing the tenant responded by stating he was going to kill her.
- The landlord's wife went into the house and the tenant followed her and banged on the door.
- The landlord's wife called 911 and stayed with her on the phone until the police arrived.
- The police attended the property and spoke with the landlord and his wife.
- The landlord and his wife were uncertain as to whether the police talked to the tenant about the incident.

The landlord also alleged that there have been other instances where the tenant used the “F” word and used racist remarks. The landlord also alleged the tenant raced his vehicle throughout the neighbourhood.

Although I had instructed the parties to refrain from interrupting each other while the other party was providing testimony, shortly after the tenant’s testimony commenced, the landlord interrupted the proceedings to address something “very important.” The landlord objected to the tenant’s tone by answering with a “mmm hmm” sound to indicate confirmation of the information I was asking of him. I did not detect any aggressive tone in the tenant’s use of those sounds but requested the tenant use the word “yes” instead.

In response to the landlord’s allegations, the tenant denied swearing or making racist comments. The tenant also denied racing his car through the neighbourhood. The tenant explained that the landlord or his wife calls the police about most things, including late payment of rent and having guests over. The tenant pointed out that the landlord even objects to the way the tenant speaks at the hearing.

With respect to the events of November 28, 2012 the tenant recalled the following:

- The tenant was using an air compressor to pump air into two tires on his vehicle and stated the air compressor was not “big machinery” as submitted by the landlord’s wife.
- The landlord’s wife approached him and demanded to know what he was doing and started yelling at him and then crying.
- The tenant did not threaten to kill the landlord’s wife.
- The tenant showed her the air compressor and explained that he was pumping air into his tires.
- The landlord’s wife called 911 from the driveway and then went inside the house.
- The tenant did knock on her door after she went inside but did not do so aggressively.
- The police came to talk to the tenant, took a statement a statement from him and then left.
- The police did not detain, arrest, or charge him.

Both parties submitted that the police have expressed disbelief that the tenancy has continued but the parties pointed to the actions of each other as being the cause for this toxic tenancy relationship.

After giving my oral decision I attempted to assist the parties in resolving their differences; however, the effort was futile as both parties continuously interrupted me and each other. I proceeded to end the teleconference call after several warnings were issued to the parties.

Analysis

Section 56(2) of the Act permits an Arbitrator 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 has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. The burden is high as this section of the Act is intended to apply in the most severe circumstances.

I find the disputed verbal testimony coupled with the fact the police did not detain, arrest, or charge the tenant with an offense related to the events on November 28, 2012 insufficient to conclude this tenancy should end under section 56 of the Act.

After hearing from the parties, it is apparent to me that the landlord and his wife may be overly sensitive to the normal sounds and activities of a tenant using and enjoying the property for which they rent. Nevertheless, the tenant must not unreasonably disturb the landlord and must fulfill his obligations to pay rent when due.

I encourage both parties to become familiar with their rights and obligations under the Act and conduct themselves accordingly.

Conclusion

The landlord's request for an early end of tenancy and Order of Possession is denied.

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: December 12, 2012.

Residential Tenancy Branch