



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET, FF.

Introduction:

This hearing deal with an application by the landlord seeking to end this tenancy early pursuant to section 56 of the *Act*.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue to be Determined:

Is the landlord entitled to an Order of Possession ending the tenancy early without Notice?

Background and Evidence:

A copy of the tenancy agreement was in evidence. Also in evidence were photos, a copy of an agreement purporting to mutually end the tenancy, a copy of an email from the tenant dated February 1, 2013, copies of communications, a copy of a One-Month Notice to End Tenancy for Cause dated September 5, 2012 and a partial copy of a Probation Order relating to one of the co-tenants.

The landlord testified that this tenancy began on January 15, 2013 with rent of \$890.00. A security deposit of \$445.00.00 was paid.

The landlord is seeking to end this tenancy early under section 56, based on a disturbing incident that occurred on February 1, 2013.

The landlord testified that the male and female co-tenants were engaged in an argument that had apparently escalated to the point where there was yelling, a car window was smashed and another resident living in a building on the property was bothered by the ruckus. The landlord testified that he later learned from the female co-

tenant that her co-tenant/partner had physically abused her and was subject to a legal restraining order. The landlord testified that the male co-tenant had also smashed a glass window of the female co-tenant's automobile parked on the property. The landlord submitted photos in evidence showing the shards of glass on the ground.

The landlord testified that police attended the site and the male co-tenant was taken away. According to the landlord, at the time this incident occurred, both of the co-tenants verbally stated that they wanted to end their lease and the female co-tenant later sent the landlord an email confirming this in writing. A copy of this email, dated February 1, 2013, is in evidence and states:

"I am sending this email in regards to the water problem.....where I pay rent. When I moved in I was told that the water problem was fixed. As of this time it has not been. I was told that the water was safe to drink, which I did so for the first couple of days. I cannot live without cleaning running water to do dishes, bath and drink. Bringing jugs of water for a couple of days is ok but 14 days later the problem is still not gone. I would like to be reimbursed my rent so I can go find a more suitable place to live." (reproduced as written)

The landlord testified that, on the basis of the discussions with the tenants, he drew up a mutual agreement for the tenants and landlord to sign on February 3, 2013. A copy of this document was in evidence and was signed by the landlord and the female co-tenant.

On February 4, 2013, the landlord then made an application for dispute resolution to obtain an Order of Possession to end the tenancy without notice. The application was amended on February 5, 2013.

The landlord testified that, on February 5, 2013, he also issued a One-Month Notice to End Tenancy for Cause and served this on the tenants by registered mail. A copy of this Notice was in evidence.

The landlord stated that he feels that the tenancy should be ended immediately without Notice, given the violent nature of the incident and the fact that there is an existing restraining order separating the co-tenants. In addition, the fact that another resident was disturbed by the co-tenants and the smashed the car window leaving glass scattered on the property would also justify terminating this tenancy without Notice, as far as the landlord is concerned.

In the alternative, should the request for an Order of Possession based on the tenant's conduct be denied, the landlord stated that he is seeking an Order of Possession based on one of the following:

- The tenant's written Notice discussing an end to the tenancy sent by email on February 1, 2013, or
- The mutual contract to end the tenancy signed by the landlord and one of the co-tenants on February 3, 2013, or
- The One-Month Notice to End Tenancy for Cause dated February 5, 2013 and served on the tenant by registered mail.

The tenant testified that the landlord's version of the incident that occurred on February 1, 2013, is not accurate. The tenant testified that there is no restraining order forbidding contact between the co-tenants, only a probation condition that requires the male co-tenant to leave when asked to do so.

The tenant pointed out that the other resident living on the property, who the landlord alleged was bothered by the incident, was not called as a witness and did not appear at the hearing. According to the tenant, the landlord's actions in trying to evict them is a retaliatory measure against the tenants for the complaints they made about inadequate water and the fact that they have filed an application for dispute resolution against the landlord to deal with the lack of water issue. The tenant stated that they never received any prior warnings about their conduct and their position is that the landlord does not have sufficient reasons to justify terminating their tenancy without Notice.

With respect to the landlord's allegation that the tenant's communication sent on February 1, 2013 by email should be enforced as a Notice to End tenancy from the tenant, the tenant pointed out that this communication was not meant as a termination of the tenancy, but was merely a complaint about the lack of water and a proposal that the rent be refunded as part of an agreement to vacate.

In regard to the alleged mutual agreement to end the tenancy, the tenant acknowledged that she did sign this document, but the tenant's position is that the conditions within the agreement were not met by the landlord. Moreover, according to the tenant, the agreement specifically states that it is not enforceable unless both parties sign it and her co-tenant did not sign the agreement.

With respect to the landlord's One-Month Notice to End Tenancy for Cause, the tenant stated that they are disputing this Notice on its merits. The tenant acknowledged that they have not submitted their own cross application to dispute the One-Month Notice to End Tenancy for Cause. The tenant stated that they were advised by the "government agent" that this could be done at the hearing today and this was the reason that they had submitted a copy of the Notice, as instructed, under the belief that the Notice could

be disputed during today's proceedings. . The tenant testified that, now that they are aware that they must file to dispute the One-Month Notice to End Tenancy for Cause, they will be amending their own application, scheduled to be heard on March 4, 2013, to also include a request to cancel the One-Month Notice to End Tenancy for Cause dated February 5, 2013.

Analysis:

Ending Tenancy Without Notice

In making an application for an early end to this tenancy, the landlord has the burden of proof to show cause for ending the tenancy without notice, based on the tenant:

- unreasonably disturbing other occupants, or
- seriously jeopardizing the health, safety or lawful right or interest of the landlord, or
- placing the landlord's property at significant risk.

After meeting the above criteria, the landlord would then be required to prove that it would be unreasonable or unfair to wait for a one month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect. (my emphasis)

In this instance, I find that the landlord provided testimony that an incident occurred, involving raised voices and overtones of violence, as verified by the broken glass and the police presence. I accept that this incident did occur. And that the tenant's conduct was inappropriate.

However, in regard to whether or not this incident is sufficient to permit the tenancy to be terminated without Notice, I accept the tenant's testimony that there were no overt threats of physical harm made against the landlord and the tenant's commitment that this behaviour will not be repeated.

With respect to the allegation that another resident on the property was unreasonably disturbed , I find that, other than the landlord's written and verbal testimony, no evidence was submitted to prove that the other resident had been lodged a complaint. I find that this witness did not appear at the hearing to give first-hand testimony about the issue.

In regard to the existence of a restraining order, I accept the tenant's testimony, and the evidence submitted to support this testimony, that the probation conditions imposed on the male co-tenant only required that he leave the presence of the female co-tenant upon request and did not directly affect the tenancy relationship.

Given the above, I am not satisfied that the landlord has sufficiently met the burden of proof to establish that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. Therefore I find that the landlord's application for an Order of Possession under section 56 of the Act must be dismissed.

Tenant's Notice to End Tenancy

In regard to the landlord's submission that an Order of Possession is warranted based on the tenant's written Notice, I find that section 45 of the Act permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the written communication sent to the landlord from the tenant by email on February 1, 2013, did not constitute a valid and enforceable notice by the tenant to terminate the tenancy. I find that the content of the communication focussed primarily on the tenant's complaints about the lack of water. More importantly, the tenant's February 1, 2013 communication does not give the landlord an effective date that the tenancy will be terminated, and therefore the Notice fails to meet the criteria under section 45 of the Act.

Mutual Agreement to End Tenancy

With respect to the landlord's testimony that the parties had signed a mutual agreement to end the tenancy, I find that section 44(1) of the Act provides the ways in which a tenancy may be ended. This includes the following circumstance:

(c) the landlord and tenant agree in writing to end the tenancy;

However, I find that the mutual agreement in evidence was not a clear document terminating the tenancy. I find that it contained numerous financial pre-conditions and specifically stated that both co-tenant's signatures were required to be valid.

One-Month Notice to End Tenancy for Cause

I find that the One-Month Notice to End Tenancy for Cause was issued on February 5, 2012 and, according to the parties, was served by registered mail. I note that section 90 of the Act provides direction for when a document is deemed to have been served, as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
 - (b) if given or served by fax, on the 3rd day after it is faxed;
 - (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
 - (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.
- (my emphasis)

A Notice mailed on February 5, 2013 is deemed to be received on February 10, 2013. I find that under section 47(4) the tenant has 10 days from the date of service to dispute the Notice, which I find would not expire until February 20, 2013.

I accept the tenant's testimony that they have already submitted an application for dispute resolution scheduled to be heard on March 4, 2013 and that they are amending this application to include a request to cancel the One-Month Notice to End Tenancy for Cause.

Therefore, I find that the landlord's request for an Order of Possession based on the February 5, 2013 One-Month Notice is premature. I make no other findings with respect to the merits of this Notice, as this matter is apparently going to be heard and determined at the hearing on the tenant's application on March 4, 2013.

Based on the evidence, I hereby dismiss the landlord's application seeking an Order of Possession without Notice based on the tenant's conduct under section 56 of the Act.

I further find that no Order of Possession is warranted based on the alleged tenant's notice to terminate the tenancy, nor the alleged mutual agreement to terminate the tenancy.

Finally I decline to consider the merits of the landlord's One-Month Notice to End Tenancy for Cause as this is premature and I make no findings. This issue will apparently be dealt with in a future hearing.

Conclusion

The landlord is not successful in the application to end this tenancy early pursuant to section 56 of the *Act* and the application is dismissed without leave.

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: February 20, 2013

Residential Tenancy Branch

