



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1170 BARCLAY STREET INC.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

ET

Introduction

This Dispute Resolution hearing was convened to deal with the landlord's application seeking an order to end the tenancy early without notice to the tenant.

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 testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy without notice under section 56(1) of the Act?

Background and Evidence

The tenancy began on December 19, 2012 and the current rent is \$1,300.00 per month.

The landlord's application states that the landlord is seeking an Order of Possession because the tenant has been:

"using the premises for Illegal Activities like prostitution, drug, Tenant never provided any ID, Steal Tools from the building" (Reproduced as written).

The landlord testified that the complex is a 16-unit building and this tenant causes other residents to be fearful about the safety of their families. The landlord testified that they received 15 complaints about the tenant since she moved in and the landlord provided a copy of an undated letter from one resident, who also appeared as a witness.

The landlord testified that the tenant has advertised sexual services on the internet and submitted copies of these advertisements in evidence. The landlord testified that the tenant has endangered the security of the building and residents, by inviting clients to the premises. The landlord pointed out that the tenant also placed the security of the residents at risk by identifying the location of the rental complex in the advertisements.

The tenant did not deny advertising her services. However, the tenant argued that she never brought clients to the building and pointed out that the address of the complex was not revealed in any of the on-line postings.

The tenant stated that she was being continually harassed by the landlord and complained that the landlord had illegally shut off her hydro power for two weeks, entered her suite without notice and posted false and hurtful things about her on the internet.

The landlord denied the above three allegations and stated that, as a professional property manager who knows the Act, they would never engage in this kind of conduct. With respect to the hydro issues, the landlord testified that it is an older building and sometimes these kinds of problems occur.

The landlord's witness, who has resided in the complex for 7 years, testified that she saw a lot of homeless people in the building and witnessed a person trying to break into the main entry door, which was compromised so that people could enter without a key. The resident witness testified that she later observed this same individual entering the tenant's suite. The witness testified that the tenant is always rude to her and was heard to use foul language. The witness testified that the tenant had knocked on her door on two occasions.

The landlord testified that the break-in, which occurred in the first week of February 2013, was reported to the landlord and the police were contacted. The landlord could not provide information as to whether or not the tenant was spoken to by police.

The tenant testified that she had no connection with any homeless people, nor did she know about the individual who had apparently vandalized the entry door. The tenant denied ever knocking on doors and stated that she had no idea why anyone would ever feel threatened by her. The tenant testified that she was not contacted by police.

The landlord testified that, although a One Month Notice to End Tenancy for Cause was served on the tenant, the Notice failed to include a reason for the termination of the tenancy and was not valid because of this flaw. The landlord testified that, after a discussion, the tenant agreed to vacate the unit at the end of March 2013 but reneged.

The landlord emphasized that it is now urgent to end this tenancy without Notice because, keeping this tenant in the complex creates a serious risk for all the residents. The landlord is requesting an immediate Order of Possession to prevent future harm.

Analysis

Section 56 of the Residential Tenancy Act provides that a landlord may make an application for dispute resolution to request an order ending a tenancy on a date that is earlier than the tenancy would otherwise end with a One Month Notice to End Tenancy for Cause under section 47.

Before issuing an Order ending the Tenancy under section 56 a Dispute Resolution Officer must be satisfied under section 56(2) that both of the following has been proven:
a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- 1. 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 interest of the landlord or another occupant; put the landlord's property at significant risk; or*
- 2. Engaged in illegal activity that: has caused or is likely to cause damage to the landlord's property; 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 jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or*
- 3. Caused extraordinary damage to the residential property.*

The above criteria must be proven **AND** the arbitrator must also find that:

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 one month notice for cause] to take effect.

Only if the landlord proves the above, would an Order of Possession be justified under section 56 of the Act.

I find that the tenant verbally disputed all of the landlord's accusations, with the exception of the evidence confirming that the tenant had placed sexual service ads on line. I accept as a fact that the tenant advertised on the internet for services, as confirmed by the evidence and the tenant.

I do not find that there was adequate proof that this particular activity, if not brought on site, would place the complex, nor the other residents, at imminent risk.

I find that the landlord's allegation the tenant conducted these illegal activities on the premises by bringing clients into the complex, was presented only as disputed *verbal accusations*. This is also the case with the landlord's allegations about the other violations, such as vandalizing the property and use of drugs.

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, it is the landlord who has the onus of proving that the order is justified under the Act.

When the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, I find that there is no need for me to determine which party is more credible or which set of "facts" is more believable.

Given that, in this case, the landlord carried the added burden of proof, I find it important that the landlord furnish independent evidence beyond mere verbal or written allegations. I find that this is necessary to establish that the situation is sufficiently urgent to warrant an immediate termination of the tenancy without Notice under section 56 of the Act.

In any case, even if I did accept the landlord's testimony as absolute truth and find that the tenant was rude to the witness, knocked on doors, associated with unsavoury-looking people and smoked in a non-smoking unit, these transgressions would not suffice to justify an immediate eviction without Notice.

I find that the landlord had the option under section 47 of the Act, to give a One-Month Notice to End Tenancy for Cause, which would require a lower threshold to justify ending the tenancy and would also give the tenant a fair opportunity to provide evidence to dispute the causes shown on the Notice.

Given the above and based on the testimony of the landlord and the evidence, I find that the landlord has not provided sufficient evidentiary support to meet the criteria to prove that it would be unreasonable, or unfair to wait for a notice to end the tenancy under section 47.

Accordingly, I hereby dismiss the landlord's application without leave.

Conclusion

The landlord is not successful in the application to terminate the tenancy without notice under section 56 of the Act and the 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: March 25, 2013

Residential Tenancy Branch