



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 Dispute Resolution, seeking an order to end the tenancy early, receive an order of possession, and to recover their filing fee.

The female landlord attended the hearing and gave affirmed testimony and was provided the opportunity to present the landlord's evidence orally and in written and documentary form, and to make submissions to me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The landlord testified that the Notice of Hearing was served on the tenant personally at the rental unit on April 29, 2013 at 6:15 p.m. and was witnessed by third parties MK and GB. The landlord confirmed that the tenant was served with the Notice of Hearing and evidence as part of the package served on April 29, 2013. I find the tenant was duly served with the Notice of Hearing and the landlord's evidence in accordance with the *Act*.

Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession?

Background and Evidence

A month to month tenancy began on April 15, 2013. Monthly rent in the amount of \$1,350.00 is due on the first day of each month. A security deposit of \$675.00 was paid by the tenant at the start of the tenancy.

The landlord has applied for an order of possession to end the tenancy early based on the tenant having too many occupants in the rental unit, smoking a substance which they allege to be marijuana, and for violating the tenancy agreement by having a dog in the rental unit.

The landlord did not submit a copy of the tenancy agreement in evidence. The landlord submitted a two-page document which indicates in part that on April 17, 18, 24, 26 and 28, 2013, the tenant allegedly had six to ten different people at the rental unit, coming and going every ten to fifteen minutes. The female landlord testified that her and her husband were doing landscaping work near the rental unit so could see this activity between 9:30 a.m. and 8:00 p.m. Other activity alleged in the two-page document submitted by the landlords are that there were many different vehicles coming and going throughout the day without the tenant being at home. The female landlord stated that they took photos of the different vehicles but was not aware that they could submit those photos in evidence after filing their application and original evidence.

The landlords failed to submit any photos or other documentary evidence and did not call any witnesses in support of their application for an early end to this tenancy. The female landlord testified that the police were contacted due to suspected drug activity at the rental unit, however, did not have a police report to submit in evidence and confirmed that no charges have been laid as the police do not have enough evidence to charge the tenant criminally.

The female landlord stated that a 1 Month Notice to End Tenancy for Cause was served on the tenant on April 29, 2013 with an effective vacancy date of May 31, 2013. In addition, the female landlord also served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 2, 2013 for unpaid May 2013 rent.

Analysis

Based on the documentary evidence and the testimony from the female landlord during the hearing and on a balance of probabilities, I find the following.

Section 56 of the *Act* indicates:

- 56** (1) 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*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) 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,**

(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.** [emphasis added]

The burden of proof is on the landlord to prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

In the matter before me, the female landlord testified that the effective vacancy date of the 1 Month Notice issued to the tenant under section 47 of the *Act* is May 31, 2013. That effective vacancy date is just over three weeks away from the date of this hearing.

I find that the landlords' allegations that the tenant has permitted too many occupants in the rental unit, allegations of smoking of a substance which the landlords allege to be marijuana, and allegations of the tenant violating the tenancy agreement by having a dog in the rental unit **do not** support ending the tenancy early without having to wait for a 1 Month Notice to take effect. **I find** the landlord has provided insufficient evidence to support the allegations described above. At the very least, I would expect the landlords to have submitted a copy of the tenancy agreement, a copy of any photos taken, a copy of a police report, if such a report exists and supports criminal activity by the tenant, and any other supporting documentation.

Therefore, **I find** that the landlords have failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the *Act*. **I dismiss** the landlords' application in full due to insufficient evidence.

As the landlords did not succeed with their application, **I do not grant** the landlords the recovery of their filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: May 08, 2013

Residential Tenancy Branch