



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties were represented at this hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male tenant (the tenant) continues to reside in the rental unit; the female tenant has moved from the rental unit. The tenant confirmed that he received a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) from the landlords posted on his door on May 16, 2013. The tenant testified that he has not received any other proper notices to end this tenancy from the landlords. Although the landlords referred to other notices to end this tenancy they have tried to serve to the tenant, it does not appear that these notices were on the prescribed Residential Tenancy Branch (RTB) forms for doing so.

The male landlord first testified that he handed the tenant a copy of the landlords' dispute resolution hearing package. Later, the male landlord said that he posted this package and the landlords' written evidence, including a flash drive containing primarily photographs of the rental unit, on the tenants' door on May 25, 2013. He said that he checked the tenants' door the following day and his package had been removed. The tenant testified that he had not received notification of this hearing until he received it the day before this hearing placed under his door. He said that the landlords did not include any written or digital evidence to him. I am satisfied that the tenant has been served with the landlords' dispute resolution hearing package in accordance with the *Act*. I am not satisfied that the landlords have demonstrated that they provided their written or digital evidence to the tenants in accordance with the *Act*, or in sufficient time to enable the tenant to know the landlords' case against him.

Both parties confirmed that another dispute resolution hearing for this tenancy has been scheduled for June 11, 2013. At that time, the Arbitrator assigned to that hearing will be considering the tenant's application to cancel the landlords' 10 Day Notice and requests for various orders for repairs and to provide services and facilities that he asserts the landlords are supposed to provide as part of this tenancy. The Arbitrator will also be considering the landlords' application for an end to this tenancy on the basis of the 10 Day Notice and requests for monetary awards for damage and unpaid rent.

Issues(s) to be Decided

Should the landlords be allowed an early end to this tenancy and an Order of Possession? Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

This periodic tenancy commenced on February 1, 2013. The male tenant continues to live in this rental unit. Monthly rent is currently set at \$1,400.00, payable in advance on the first of each month.

In the Details of the Dispute section of their application for an early end to this tenancy, the landlords described their request in the following terms:

Excessively damaged... property.

Steal appliances

Harmful/abusive to landlord

Disturbance to tenant in basement

Although both landlords and their agent described behaviours that they considered grounds for ending this tenancy early, they confirmed that the landlords have not issued any 1 Month Notice to End Tenancy for Cause (1 Month Notice) on the prescribed RTB forms to the tenant(s). The landlords described a range of actions and concerns about this tenancy that they find objectionable. They maintained that the tenant had stolen the stove, fridge and microwave in this rental unit and that he had damaged the rental unit extensively. They also said that the tenant was intimidating and that police had been called a number of times. They said that the tenant has been abusive and disruptive in his tenancy and that the other tenant in this building and the landlords are frightened by his behaviours. The female landlord and the landlords' agent noted repeatedly that the tenant had not paid his rent and believed that his failure to do so entitled the landlords to obtain an early end to this tenancy. The female landlord is also concerned that further damage may result if this tenancy is allowed to continue until the June 11, 2013 hearing. She asked me to consider the flash drive photos, photos that I am not at all satisfied were provided to the tenant in advance of this hearing.

The tenant testified that the landlords entered into an oral and written agreement with him to let him conduct repairs to the rental unit in partial exchange for rent. He denied having taken the landlords' appliances. He said that a group of individuals, likely known to the landlords, entered the rental unit and removed all of the appliances, and that the female landlord told him that she would return them when the repairs were completed.

Both parties said that they had called the police to intervene in their dispute. They both referred to police reports and had Police File numbers that they were eager to provide to me, as some form of evidence to confirm their version of events. Both parties confirmed that they did not have copies of these police reports. I advised both parties that I have no access to police reports. Unless parties file police reports as written evidence or have police available as witnesses at the hearing, I have no way of taking into account evidence attributed to but not provided by the police.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *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 interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

Based on the testimony of both parties and my review of the evidence properly before me, I find that the landlords have failed to prove that any of the circumstances described above exist such that it would be unreasonable or unfair to the landlords or other tenants to serve the tenant with a notice to end tenancy under section 47 of the *Act* and wait for that notice to take effect. In this case, there is a hearing scheduled for June 11, 2013, although that hearing is to consider the landlords' attempt to end this tenancy on basis of the 10 Day Notice issued for the alleged non-payment of rent. Given the conflicting accounts of who is responsible for the lack of appliances in the rental unit and whether or not the landlords' entered into an agreement with the tenant to conduct repairs, I find that this tenancy can be extended another 12 days, to await the outcome of the June 11, 2013 hearing. The June 11, 2013 hearing could lead to an end to this tenancy for the tenants' failure to pay rent.

As I noted at this hearing, the landlords have not as yet even issued a 1 Month Notice to End Tenancy for Cause, let alone wait for that notice to take effect. I find the landlords' current application appears more in the nature of attempting to circumvent the method for ending a tenancy for cause without having to go through the standard steps of first issuing a 1 Month Notice and then waiting for that 1 Month Notice to take effect. If the landlords believe they have grounds for issuing a 1 Month Notice, they should do so on the prescribed RTB Form and serve that document in a method allowed under the *Act*. Given the disputes about service of documents, they may wish to consider serving the tenant by registered mail.

As I noted at the hearing, an application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution. As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlords' application for an early end to this tenancy.

Conclusion

I dismiss the landlords' application with the effect that this tenancy continues.

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: May 31, 2013

Residential Tenancy Branch

