



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 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;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:59 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male landlord testified that he handed the male tenant a 2 Month Notice to End Tenancy for Landlord Use of the Property (the 2 Month Notice) on April 13, 2013. The female landlord testified that she witnessed her husband, the male landlord, hand this Notice to the male tenant. The landlords testified that they sent both tenants copies of their dispute resolution hearing package by registered mail on April 17, 2013. They provided copies of the Canada Post Tracking Numbers and Customer Receipt to confirm these mailings. I am satisfied that the landlords served the above documents to the tenants in accordance with the *Act*.

At the commencement of this hearing, the male landlord said that he had received a notice of hearing from the tenants with respect to their application to cancel the 2 Month Notice. He testified that the hearing of the tenant's application is scheduled for 9:00 a.m. on May 14, 2013.

Issues(s) to be Decided

Are the landlords entitled to an early end to this tenancy and an Order of Possession?
Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy for the upper two bedroom room unit in a duplex began commenced on or about September 13, 2005, for a fixed six-month term. After the expiration of the initial term, the tenancy converted to a periodic tenancy. The landlords purchased this rental

property in 2006. Current monthly rent is set at \$875.00, payable in advance on the 15th of each month. The landlords continue to hold the tenants' \$450.00 security deposit paid on September 12, 2005 and the tenants' \$400.00 pet damage deposit that the landlords believe the tenants paid on September 18, 2005.

The landlords provided written evidence and sworn testimony regarding their concerns about the escalating set of behaviours exhibited by the male tenant. They said that he has a history of violence and assaults, and has become increasingly threatening and harassing in his behaviours to both them and the other tenant(s) in this duplex. They provided no written statements from the other tenant(s) in this duplex and did not call anyone else as witnesses during this hearing.

The most serious incident cited by the landlords leading to their current application was an April 8, 2013 incident in which the landlords maintained the male tenant became aggressive and agitated and "threatened" the female landlord. This occurred when the landlords were attempting to conduct an inspection of the rental unit. In their written evidence, the landlords asserted that the tenant told them that he was on "heavy medication" and that he could not be held responsible for his outbursts of aggression. They noted that they could not conduct their inspection of the tenants' rental unit because they felt threatened.

The landlords also described more recent incidents in which the male tenant contacted them to advise them that there was ongoing water damage in the kitchen of the rental unit and that they should come to the rental unit as soon as possible. When they rushed to the rental unit to inspect the situation, the male tenant told them this was a false alarm and handed them a copy of his dispute resolution hearing package for the May 14, 2013 hearing. In addition to earlier requests the female tenant to the other tenants in this rental property that the landlords found inappropriate, the female landlord said that two subsequent interactions with the male tenant led the landlords to become more concerned that the male tenant is contemplating causing flooding damage to the rental unit.

They testified that they feel threatened and harassed by the male tenant and have legitimate concerns about the security of their investment as a result of the male tenant's actions.

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.

In considering the landlords current application for an early end to this tenancy, I must be satisfied that the tenants' actions are so unreasonable and unfair that the landlords should not be required to wait for a notice to end tenancy for cause to take effect. However, as I noted at the hearing, the landlords have not issued a 1 Month Notice to End Tenancy for Cause (a 1 Month Notice), the standard remedy for seeking an end to a tenancy for the types of behaviours allegedly displayed by the tenants. However, the landlords have issued a 2 Month Notice, in which they are seeking an end to this tenancy by June 14, 2013.

While the landlords have submitted a written chronology of events commencing in November 2012 and have said the male tenant has been problematic for much of this tenancy, they have not produced any evidence other than their own sworn testimony and their own notes of their interactions with the tenants. They confirmed that they have not involved the police in any of the incidents where the landlords felt threatened, nor could they identify a specific threat made to either one of them, save for the male tenant's statement on April 8, 2013, outlined above. I find that the meaning of the male tenant's statement on April 8, 2013 could be interpreted a number of ways and if the landlords truly believed that this was as specific threat, they could have taken this

matter to the local police. They also confirmed that there has not been any actual flooding in the rental unit of which they are aware. While ethically questionable, the measures the male tenant allegedly adopted to serve the tenants' dispute resolution package to the landlords are by no means grounds to end a tenancy early.

I appreciate that the landlords may genuinely feel that they have been threatened by the male tenant and that his actions are of great concern to them. However, their feelings and their concerns are not sufficient on their own to demonstrate their entitlement to an early end to this tenancy, particularly as they have already issued a 2 Month Notice to the tenants in which they are seeking a more standard method of ending this tenancy. As I noted during the hearing, the standard established to end a tenancy early is high and there must be strong evidence that it would be unreasonable or unfair to allow a tenancy to continue until the notice provisions of a 1 Month Notice can take effect. I find that the landlords have failed to prove that 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.

I also recognize that this tenancy could end if the tenants' ongoing application to cancel the 2 Month Notice were dismissed and the landlords make an oral request at that hearing for an Order of Possession, as they said they intended to request at the May 14 hearing.

Conclusion

I dismiss the landlords' current application for an early end to tenancy without leave to reapply. As I have dismissed this application, the landlords bear the costs of their filing fee for this application.

This final and binding 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 02, 2013

Residential Tenancy Branch

