



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy and an Order of Possession. The tenant did not attend this hearing, although I waited until 9:44 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord and the landlord's wife testified that the landlord handed the tenant a copy of the landlord's dispute resolution hearing package at the landlord's home at approximately 7:00 p.m. on June 19, 2013. I am satisfied that the landlord served his hearing package to the tenant in accordance with the *Act*.

The landlord said that he is uncertain as to whether the tenant has vacated the rental unit. He said that the tenant was still occupying the rental premises as of Sunday, June 30, 2013.

Issues(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?

Background and Evidence

The tenant rents the upper floor of a duplex home from the landlord. Monthly rent is set at \$1,050.00, payable in advance on the first of each month.

On May 8, 2013, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) for rent owing for May 2013. The landlord testified that he applied for dispute resolution to end the tenancy on the basis of the 10 Day Notice, but did not proceed with that application when the tenant paid all of his rent for May and June 2013. The tenant has not paid rent for July 2013.

The landlord's wife testified that she received a phone call on June 4, 2013, from the male tenant who lived in the lower level of this two-storey duplex (Mr. X). Mr. X told her that he was in an ambulance accompanying his wife and child to the hospital as a result of a shooting incident in which someone in the upper level of this duplex had shot a gun through the floor and injured his wife. Police were called and took people from the upper rental unit into custody.

The landlord entered into written evidence a copy of a newspaper article outlining what happened in this incident. Although the landlord could not obtain information from the police report of this incident, the newspaper article reported that Mr. X's wife was struck by a gun shot fired from the top floor of this rental home, the unit rented to the tenant. The landlord stated that similar reports were on the radio and television on the day of the incident. The newspaper report noted that a 34-year old man and a 19-year old woman were taken into custody by police. The article stated that "Police believe the man is one of two men involved in a violent altercation that led to the shooting, while the woman is an acquaintance of both men." The article also reported that a "neighbour who lives beside the house in the shooting said he's been afraid to let his kids out because of the sketchy characters coming and going in the past few months."

The landlord testified that his female tenant in the lower unit recovered from her gunshot wound. Under the circumstances, the landlord allowed the tenants in the lower unit to end their tenancy immediately as they were terrified of returning to the rental unit.

The landlord testified that the tenant in the upper rental unit has allowed many people into the rental unit who have caused damage and problems. He said that the windows and doors have been smashed and there are frequent visits by the police to respond to fights that occur in the rental unit. He said that neighbours have complained about the ongoing problems caused by this tenancy.

Analysis

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 1 Month Notice to End Tenancy for Cause (a 1 Month Notice) under section 47 of the *Act* can take effect or be considered by way of an application for dispute resolution. Section 56 (2) of the *Act* permits me to make an order specifying an earlier date for the end of a tenancy than would be the case had the landlord issued 1 Month Notice, only if I am satisfied that the tenant or his guests have 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.

Section 56 (3) of the *Act* provides that: If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Based on the evidence of the landlord and his wife, I find that there have been ongoing problems with the behaviours displayed and the damage caused during this tenancy. The landlord and his wife have provided undisputed evidence that all of the seven set of circumstances outlined above have occurred. Any of these seven scenarios could lead to an early end to this tenancy. While these incidents may call for the issuance of a 1 Month Notice, I find that the June 4, 2013 incident involving gun violence and the wounding of another tenant in this rental property through the floorboards has raised the conduct to a new level that is frightening to the landlord and has caused serious harm to his other tenants, who ended their tenancy as a result of the actions arising from the upper rental unit. The undisputed evidence has also satisfied me that the tenant or his guests have engaged in illegal activity that has affected the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property and it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a 1 Month Notice under section 47 to take effect.

Accordingly I allow the landlord's application for an early end to this tenancy and I find that this tenancy ends immediately on July 4, 2013. I issue an Order of Possession to the landlord on that basis.

Conclusion

I allow the landlord's application to end this tenancy early and grant the landlord an immediate Order of Possession. This Order may be filed in the Supreme Court and enforced as an order of that Court.

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: July 04, 2013

Residential Tenancy Branch

