



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAIR LABEL ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with a landlord's application for an early end of tenancy and Order of Possession. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord provided an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy commenced September 1, 2012 and the tenants are required to pay rent on the 1st day of every month. The tenancy is currently on a month-to-month basis.

The landlord is seeking an Order of Possession based upon an incident that took place at approximately 3:22 p.m. on July 25, 2013 in a stairway of the building. The landlord submitted that a guest of the tenants (referred to as Mr. T) was seen, on video, leaving the rental unit and entered the stairwell where another tenant coming up the stairs was pepper sprayed. Mr. T immediately returned to the rental unit and then approximately seven minutes later left the rental unit and the residential property. After being pepper sprayed the victim proceeded immediately to the resident manager's office and then the police were called. The property manager attended the property shortly thereafter and found the air saturated with pepper spray, causing her to cough and wheeze. The landlord confirmed that the assailant was as a former tenant in another building who was responsible for several disruptions during his tenancy. The complaint filed by the other tenant remains under investigation with the police.

The identity of the guest and his actions were not disputed by the tenants. Rather, the tenants acknowledged that Mr. T arrived at the rental unit approximately a couple of hours prior to 3:22 p.m. and is seen on the video leaving the rental unit just prior to the incident involving the pepper spray. The tenant explained that Mr. T had complained that he had been assaulted earlier in the day by the other tenant and was afraid to leave the unit. Mr. T eventually chose to leave the unit at the same time the other tenant was coming up the stairs. The tenants did not see what occurred in the stairwell as they were not present in the stairwell at the time of the incident. Since Mr. T left the property the tenants have not seen or heard from Mr. T again.

The landlord acknowledged that she is unaware of Mr. T visiting the tenants at the building since the incident of July 25, 2013.

The tenants are prepared to deny Mr. T entry or access to their unit in the future to continue with the tenancy. After discussions concerning a tenant's responsibility and obligations under the Act with respect to conduct of their guests, the tenants acknowledged that they are now fully aware of their responsibility for the actions of their guests.

Analysis

Section 56(2) of the Act permits an Arbitrator to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied that:

- (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.

[my emphasis added]

The landlord bears the burden to prove the tenant, or a person permitted on the property, has acted in such a way as to warrant an order to end the tenancy for cause and that the severity of the circumstances is such that it is unreasonable to wait for a 1 Month Notice to take effect. The burden is high as this provision is intended to apply in the most severe circumstances.

In this case, I accept the evidence before me that a person permitted on the property by the tenants assaulted another tenant of the property and that the assault significantly interferes with the other tenant's right to peaceful use and enjoyment of the residential property. Thus, I find this incident may be grounds to end the tenancy for cause.

Although I am satisfied the incident of July 25, 2013 is grounds for ending the tenancy for cause, in order to grant the landlord's request for an early end of tenancy I must be satisfied that it is unreasonable to wait for a 1 Month Notice to take effect. In this case, I find the absence of Mr. T since the incident of July 25, 2013 to be a mitigating factor and the tenants' willingness to restrict Mr. T's entry to the unit in the future to be sincere.

In light of the above, I find the landlord has not satisfied me that it is unreasonable to wait for a 1 Month Notice to take effect and I do not grant the landlord's request for an early end of tenancy.

Pursuant to section 63 of the Act, I find it appropriate to issue the following ORDER to the tenants:

1. The tenants shall not, at any time from this date forward, permit or otherwise provide Mr. T a means to access the rental unit or residential property.

Failure to comply with the above order may be grounds to end the tenancy for failure to comply with an Order of the Director.

The tenants are now considered fully aware that, under the Act, the tenancy may be ended due to the actions of their guests while in the rental unit or the common areas of the residential property.

Conclusion

I deny the landlord's request for an early end of tenancy and Order of Possession; however, the tenants have been cautioned and issued an order with respect to the actions of persons permitted on the property by them.

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: August 07, 2013

Residential Tenancy Branch

