



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Early End to Tenancy and Order of Possession. The landlord also seeks to recover the filing fee for this proceeding from the tenant.

The tenant and the landlord attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross exam each other and the landlords witnesses on their evidence. The landlord provided no documentary evidence to the Residential Tenancy Branch or the other party. The testimony of each party has been reviewed and has been considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy early and gain an Order of Possession on the basis of their application to end the tenancy early pursuant to section 56 of the *Act*?

Background and Evidence

The parties agree that this month to month tenancy started on June 01, 2013. Rent for this unit is \$535.00 per month and is due on the first day of each month in advance. The tenant rents a room and common areas from the landlord and shares these areas with another tenant (the roommate).

The landlord testifies that the two tenants do not get along and there are constant arguments, fighting, and door slamming going in the unit. The landlord testifies that he lives in the unit upstairs and his son lives in an adjacent unit and his daughter lives in another adjacent unit. The landlord testifies that the roommate complains that this tenant goes into his room and steals items from the roommate's room. This tenant accuses the roommate of fighting with him.

The landlord testifies that he has given both tenants a Notice to End Tenancy. The landlord testifies that this tenant has called the police on at least four occasions. The landlord has provided police file numbers. The landlord testifies that this tenant is not normal and the tenant's mother has informed the landlord that her son should be in a hospital as her son is not taking his medication.

The landlord testifies that the tenant asked the landlord if he could put a padlock on his bedroom door to prevent the roommate entering as the tenant had a lot of money in his room. The landlord testifies that he told the tenant that he could not put on a padlock but should put his money in a bank. The landlord testifies that the tenant put a padlock on the door anyways and has been seen entering and leaving his room through the window. The landlord testifies that this has damaged the door. The tenant has also damaged the roommates door and some walls with a hammer. The landlord testifies that the police are called because the arguments between the tenants are very heated. On one occasion the tenant also called the police to report the landlord who was fixing the tenants window.

The landlord testifies that this tenant gets up in the night and starts screaming, yelling and slamming doors. The landlord testifies that this drives the landlord crazy. The landlord calls his first witness who is the landlord's daughter (TT).

The witness testifies that since this tenant has moved in there has been constant noise. The tenants argue and slam doors constantly and the police have been called out on numerous occasions due to the altercations between the tenants. The witness testifies

that the tenant has damaged door when he put on a padlock and has also damaged the door frame when he was hitting the door with a hammer. The witness testifies that she has heard this tenant say that the roommate is going to kill him and has thrown chairs at him. The witness testifies that on one occasion she entered the tenants unit to tell the tenant to stop the noise but the tenant denied it. The witness testifies that she saw the tenant slamming doors. The witness testifies that she has heard yelling and screaming late at night and loud music being played at 2.00 a.m. the witness testifies that there was an occasion when the tenant had his young son over and the witness could hear the tenant screaming abuse at his son. The witness testifies that she called the tenants mother and the tenant's mother told the witness that the tenant was mentally unstable.

The tenant cross examines the witness and asks the witness how the witness could see the tenant slamming doors. The witness responds that she saw the tenant doing this when she walked into the tenants unit.

The landlord calls his second witness who is the landlord's son (FT). The witness testifies that there has been a lot of noise and arguments from the tenants unit and the police have been called many times. The witness testifies that there was an altercation between the witness and tenant when the tenant was banging on the witnesses door trying to gain entry into the laundry room. The witness testifies that the tenant was very confrontational. The tenant then broke into the laundry room and did his laundry on a day that was not allocated to the tenant. The witness testifies that the tenant also uses his window to go in and out of his unit. The witness testifies that the tenant has no respect for other occupants.

The tenant cross examines this witness and asks the witness why the witness became violent towards the tenant by pushing the tenant with his chest, making a fist and being in the tenants face, pushing the tenant back to his room when the tenant came to ask about the laundry room. The witness responds that this did not happen. The witness testifies that he asked the tenant to leave and go back to his own unit. The tenant asks

the witness if he is a professional fighter. The witness responds that he is but they are very disciplined fighters and do not start fights.

The tenant disputes the landlord's claims. The tenant testifies that he is the victim in all this as it is the tenant's roommate that has bullied and victimised the tenant. The tenant testifies that his roommate is a chronic alcoholic who also smokes in his bedroom. The roommate accuses the tenant of going into his room and stealing items however the tenant testifies that this is not true. The roommate attacks the tenant, throws chairs at him and grabs him by the throat. The tenant testifies that he has to phone the police to protect himself from this roommate.

The tenant testifies that the landlord and his son and daughter are trying to intimidate the tenant into leaving as they don't like it when the tenant calls the police and the police turn up at the unit. The tenant testifies that the landlord's son has bullied the tenant and used threatening body language towards the tenant. The tenant disputes that he was abusive towards his son. The tenant testifies that his son was visiting for three hours and the landlord called the tenants mother to say he was yelling at his son. The tenant testifies that his mother questioned his son who told his mother that the tenant was not yelling at him.

The tenant testifies that he does not smoke, drink or do drugs. The tenant testifies that he works from 8.00 a.m. till 11.00 p.m. and on the nights he is not working late he is in bed by 9.00 p.m. The tenant testifies that he does not slam doors and does not own a stereo. The only music the tenant plays is on his cell phone and that does not have speakers. The tenant agrees that he did call the police about the landlord when he found the landlord in his room. The tenant denies using his window to get in and out of his unit and testifies he only did this on one occasion when the tenant had locked his keys in his room. The tenant disputes the landlords claim that he has caused any damage to the doors or walls in his unit and asks the landlord to produce evidence to show this damage.

The tenant testifies that the landlord has served the tenant with a One Month Notice to End Tenancy. The tenant has disputed that Notice and a hearing is scheduled to hear the tenant's application on September 12, 2013.

Analysis

When an Early End to Tenancy is granted, instead of receiving a One Month Notice, which a tenant would receive when being evicted for cause, the tenant receives virtually no notice. An early end to tenancy is an extreme remedy under the *Act*, when there are provisions in the *Act* providing the landlord with opportunity to evict the tenant for cause and providing the tenant with a specific notice period.

Under S. 56(2)(b) of the *Act*, in order to establish a claim for an early end to tenancy, the landlord must establish that 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 Tenancy under s. 47 of the *Act* (my emphasis).

The landlord has the burden of proof to show that the tenant has acted in a manner which would give rise to the extraordinary measure of issuing an Order of Possession to the landlord to end the tenancy early. The landlord has provided sworn testimony along with sworn testimony of the landlord's son and daughter acting as witnesses to the landlord. The tenant has contradicted the landlord's testimony and that of the landlord's son and daughter. Consequently the landlord would be required to provide corroborating evidence to meet the burden of proof and in this matter I find the landlord has failed to do so. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Therefore I have insufficient evidence that would allow me to end this tenancy early and find it would not be unreasonable or unfair for the landlord to wait for a Notice to End Tenancy for cause to be heard at the hearing on September 12, 2013.

Conclusion

For the above reasons I dismiss the landlords application in its entirety.

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 19, 2013

Residential Tenancy Branch

