



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding L & M Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ET, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of possession based on an early end to the tenancy and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that the tenants were each personally served with Notice of the hearing. A sworn affidavit was supplied confirming personal service occurred to the female tenant on September 4, 2013 at 5:24 p.m., at the rental unit. Service was completed by a private investigator, acting as agent for the landlord. Service was then affirmed by a Commission for taking oaths in British Columbia.

The landlord had a 2nd affidavit that indicated the same agent served the male tenant on September 5, 2013 with copies of the Application for Dispute Resolution and Notice of Hearing at 10:05 a.m., on the patio of the tenant's rental unit. That affidavit was also confirmed by a Commissioner for oaths.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act, however; neither tenant attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to filing fee costs?

Preliminary Matters

The landlord stated that they have been served with Notice of an October 7, 2013 hearing, based on the tenant's application made on August 27, 2013, requesting more time to cancel a 1 month Notice to end tenancy.

The landlord made this August 30, 2013 application requesting an early end of the tenancy as they cannot wait for the tenant's hearing. The landlord confirmed that they had not applied requesting an Order of possession based on the 1 month Notice issued on July 31, 2013. The landlord said the effective date of that Notice was August 31, 2013.

An explanation was provided to the landlord, outlining the option of submitting an application requesting an Order of possession, based on a 1 month Notice issued for cause.

Background and Evidence

The tenancy commenced approximately 6 years ago; a signed tenancy agreement was not supplied. Rent is due on the 1st day of each month. The tenants live on a ground floor of a multi-unit building.

The landlord supplied a number of letters and some emails from other occupants of the building, outlining issues with the tenants. The landlord's part-time caretaker testified that the tenants, in particular, the male tenant P.C., has always caused problems in the building. It is alleged that he yells, swears, urinates off of his patio, regurgitates in the halls and generally causes disruption to others.

On July 29, 2013 the police were called in relation to a disturbance in which the caretaker alleges the tenant was verbally abusing his seventeen year old daughter. This event resulted in the police and numerous occupants of the building attending at the unit in order to intervene on the daughter's behalf. After this incident occurred the caretaker felt that the male tenant posed a threat to safety and on July 31, 2013 a 1 month Notice to end tenancy for cause was issued.

Prior to this time the tenant has reportedly walked around the halls of the building, partially clothed. Written submissions indicated that the tenant leaves the door to the building open, that he shouts and swears at other occupants, that the family has fights and have caused disturbances for years. One tenant reported the male had been seen walking in a hall with a hunting knife; no date of this alleged incident was indicated.

The female tenant had been told by the police she could apply for a restraining order; there is no evidence she has done so.

The care-taker said people know that the male tenant is violent and that his behavior has resulted in multiple police calls to the building. The event that occurred on July 29, 2013 was the most disturbing and presented serious concerns to other in the building.

On September 5, 2013 the male tenant is reported to have yelled at people on a balcony above his unit. Since July 31 the male tenant has been seen urinating from his patio.

The landlord said that their full-time caretaker is currently unavailable; he has talked to the male tenant on many occasions, but the behaviours have not ceased.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that he has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord and his witness, I find that the landlord has not met that burden.

I find that the behaviour described has been occurring throughout this tenancy. The issues described may well form cause to end the tenancy, but I find that there was no compelling evidence that the tenant is engaging in any behaviour that has not been ongoing throughout the tenancy.

Now that the landlord has issued a Notice ending the tenancy, should the tenant be granted an extension of time to cancel the Notice, the landlord will have an opportunity at the October 7, 2013 hearing to present evidence in support of that Notice.

After the tenants were given the 1 month Notice ending tenancy the landlord was at liberty to submit an application requesting an Order of possession based on that Notice; they did not do so.

A request for an early end of tenancy is considered valid for instances where serious jeopardy, significant risk or disturbance can be proven; **and** it would be unreasonable for the landlord to wait to enforce a Notice ending tenancy. In this case I find it is not unreasonable for the landlord to wait to enforce the Notice and that they will have the opportunity to do so on October 7, 2013.

Therefore, the application requesting an Order of possession based on section 56 of the Act is dismissed.

Conclusion

The application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 16, 2013

Residential Tenancy Branch

