



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 a landlord's application to end the tenancy early and obtain an Order of Possession. The landlord also applied to recover the filing fee from the tenants for the cost of the application.

The landlord personally served the tenants with a copy of the application and the Notice of Hearing documents at the rental suite with a witness. The landlord appeared for the hearing but there was no appearance by the tenants. Based on the lack of any other evidence provided by the tenants to dispute the service of the hearing documents and evidence used in this hearing, I find that the tenants were served with them in accordance with the Residential Tenancy Act (referred to as the *Act*).

The landlord provided both affirmed testimony during the hearing and documentary evidence prior to the hearing. In the absence of any evidence provided by the tenants all of the landlord's evidence was carefully considered in this decision.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that the tenancy started on November 1, 2013 on a month to month basis. The tenants paid a security deposit of \$380.00 on October 27, 2013 and rent is currently payable in the amount of \$750.00 on the first day of each month.

The landlord testified that when she entered into a tenancy agreement with the tenants she made it very clear that pets were not allowed in the rental suite as her eldest daughter had an extreme allergy to pets. The written tenancy agreement was provided

as evidence for the hearing and states in section 4 that there is 'Absolutely no pets' and this was the reason why no pet damage deposit was taken. This was further reinforced and re-iterated in the addendum which states that there is to be no smoking and no pets as this constitutes a health hazard for the landlord's kids. This addendum was signed by the tenants.

The landlord testified that after the tenancy began the tenants failed to pay rent. The landlord visited the tenants at the rental suite to ask them for the rent and complete the move-in condition inspection report on November 3, 2013. During the inspection the landlord saw a black/grey cat in the rental suite and questioned the tenants about this. The male tenant explained that the cat belonged to his parents who could not look after it and therefore the pet had to remain in the rental suite. As a result, the landlord issued the tenants with a notice to end tenancy for unpaid rent and a notice to end tenancy for cause based on their refusal to remove the cat. The landlord pleaded with the tenants to leave the rental suite, even offering to pay their moving costs.

The landlord testified that the effect that the cat had on her eldest daughter's health was profound as it caused her to have multiple nose bleeds throughout the day and night. The landlord provided pictures of bloodied tissues and bloodied pillows which her eldest daughter slept on. The landlord also testified that her daughter struggled with her breathing and provided a picture of the medication that her daughter needed to take as a result. The landlord testified that her daughter rarely stays in the house because of the danger posed to her health and is currently residing at a relative's house.

The landlord testified that she decided to wait for the 1 Month Notice to End Tenancy to take effect, but the tenant had no intention on vacating the rental suite in accordance with the effective date of the notice of November 30, 2013.

During the night of November 28, 2013, the male tenant started to bang on the landlord's door and playing loud music. The landlord called the second renter in the same building to see if this disturbance was coming from her suite but it was not. The landlord decided to ignore the banging after which point she hear the male tenant shouting obscenities at her. The landlord testified that the tenant shouted "I will kill you fucking bitch. I can't wait to strangle you nigger and the nigs (referring to her kids). I'm so mad; you think you can ask me to leave. I will kill you with my fucking hands. Don't fuck with me".

The landlord testified that these threats continued for an hour, after which point the male tenant proceeded to the front drive where he could see the landlord's window and continued to shout the same threats and racial obscenities. The landlord testified that

she looked out of her window to see the male tenant pointing at her with his hands in the shape of a gun.

This caused the other renter to leave the property and the landlord's children woke up crying after hearing the disturbance. The landlord called the police and provided a police reference number. The landlord testified that the police attended and dealt with the incident advising the landlord to start up the eviction of the tenants.

The other renter provided an e-mail account stating that the tenants often play loud music during the late hours of the night and there are often sounds of violence and yelling coming from the tenants' suite. The renter states that she is scared of the tenants and as result has left her rental suite since the incident on November 28, 2013.

The landlord further testified that on November 30, 2013, she attended the rental suite with her brother to serve the tenants with the hearing papers for this hearing. During this time they noted that the tenants were smoking marijuana and when they were confronted about this the male tenant pushed the landlord and tried to hit her brother. This was witnessed by the other renter who happened to be present because she was collecting belongings from her rental suite as she no longer felt safe in the property. As a result, the landlord again called the police and provided a reference number for this incident. During the evening of November 30, 2013 the landlord testified that the tenants continued to bang and yell in their rental suite with the purpose of disturbing the landlord.

Throughout the landlord's testimony her voice trembled and she also broke down several times during the hearing. The landlord is also seeking help from victim services.

Analysis

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause.

Although the effective date of the notice to end tenancy for cause has lapsed, I am satisfied by the evidence and testimony presented during the hearing that the tenants have significantly interfered with and unreasonable disturbed the other occupant and the landlord. I also find that the tenants, by having a pet in the rental suite and having been prohibited from having such a pet and being warned of the need to remove it, have seriously jeopardised the health and safety of the landlord's eldest child.

Based on the undisputed testimony and documentary evidence of the landlord, and on a balance of probabilities, I accept the landlord's evidence and I find that the tenancy should end early. Therefore the landlord is entitled to an Order of Possession effective two days after service on the tenants.

I also find that the landlord is entitled to the cost of filing the application and therefore, the landlord may retain \$50.00 from the tenants' security deposit.

Conclusion

For the reasons set out above, I grant the landlord an Order of Possession effective **2 days after service on the tenants**. This order may then be filed and enforced in the Supreme Court 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: December 11, 2013

Residential Tenancy Branch

