



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 an application by the landlord for an early end of tenancy and an order of possession. The hearing was conducted by conference call. The landlord called in and participated. The tenant attended the hearing with her daughter, although she testified that she was not served with the landlord's application and only learned about the hearing after she spoke to an information officer at the Residential Tenancy Branch. The landlord testified that the tenant was served with the hearing package, including the application for dispute resolution, the Notice of Hearing and the landlord's documentary evidence on December 19th by leaving copies at the rental unit. The tenant denied that she received the documents, however, the following day she attended at the Residential Tenancy Branch and filed her own application for dispute resolution to seek various remedies from the landlord. The landlord submitted a form of proof of service whereby a friend who attended with him confirmed the delivery of documents. I prefer the landlord's evidence as to service, because it included the confirmation of a witness and because, the tenant's attendance at the Residential Tenancy Branch the following suggests that it was responsive to the receipt of the landlord's documents. Based on the evidence presented I find, on a balance of probabilities that the tenant was served with the application and Notice of Hearing and I deny the tenant's request for an adjournment of this proceeding.

Issue(s) to be Decided

Should the tenancy end early? Is the landlord entitled to an order for possession?

Background and Evidence

The rental unit is in the lower floor of a home in which the landlord occupies the upper floor. The tenancy began on July 15, 2013. The landlord complained that the tenant

has been harassing the landlord and his family by turning off the electrical circuit breakers and by making unfounded noise complaints and as well by threatening the landlord. The landlord said that the tenant has made false complaints to the police and that she continues to turn off circuit breakers located in the rental unit that control the supply of power to the premises occupied by the landlord. The landlord submitted copies of some text messages that he said amounted to threats by the tenant. The text messages included a comment about “doing laundry”, a message that: “...I guess you won’t mind paying back rent...” and a remark that: “Would you prefer the breaker off? “

The landlord said these comments amounted to threats. The tenant said that she and her daughter have been unreasonably disturbed by the landlord by his family making noise walking upstairs with their shoes on and by doing laundry late at night. She said that the landlord has not performed necessary repairs that were promised and that she has been deprived of her right to do laundry at specified times. She said that she has turned off the circuit breaker that controls the dryer and it is currently turned off because it is her time to do laundry and the landlord is preventing her from using the laundry facilities.

The tenant said at the hearing that she intends to move out of the rental unit because the living conditions are unacceptable, but she want the landlord to give her a months’ free rent as an inducement to move. The tenant testified that she has filed her own application for dispute resolution that is scheduled to be heard in February, but she has not yet served it on the landlord.

Analysis

Under section 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 the tenancy under section 47” (emphasis mine). I am not satisfied that this unreasonableness or unfairness exists in the circumstances related by the landlord. The landlord’s chief complaint is that the tenant has turned off circuit breakers and deprived him of power in his living quarters, but he acknowledged at the hearing that the circuit breaker that is now turned off does not affect premises he occupies, but controls only the dryer in the laundry room of the lower floor of the rental property. The tenant was advised at the hearing that if she has a remedy for loss of laundry facilities it must be dealt with by way of an application for dispute resolution, not by means of any retaliatory measures. I find that the matters complained of by the landlord are not matters that would justify the use of the extraordinary remedy of ending the tenancy

without notice and accordingly I dismiss the landlord's application. The landlord is at liberty to serve the tenant with a one month Notice to End Tenancy for cause, or if rent is not paid, a 10 day Notice to End Tenancy for unpaid rent, using the proper form under the *Residential Tenancy Act*. The landlord will bear the cost of the filing fee for this application.

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 27, 2013

Residential Tenancy Branch

