



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

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 tenant, the landlord and an agent for the landlord attended the conference call hearing and gave sworn testimony. The landlord provided minimal documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are 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 26, 2013. Rent for this unit is \$700.00 per month and is due on the 1st day of each month.

The landlord's agent testifies that the tenants did not tell the landlord the truth at the start of the tenancy concerning the tenants' disability status and about being non smokers.

The tenant has been smoking in the unit which has affected the landlord's health. The landlord ended up in Hospital in intensive care for three days. The landlord's doctor has provided a note saying that the landlord suffers with asthma and must not be exposed to inhaled irritants or smoke. The landlord is 77 years old and now as a major heart condition due to the tenants smoking and the nightly fights between the tenant and the tenants guest which prevent the landlord from sleeping.

The male tenant and the female tenant had a big fight and the male tenant beat up the female tenant and then moved out. The female tenant had a guest staying in the unit and now it is the tenant and her guest that fight late at night.

The landlord agrees that there is not a non smoking clause in the tenancy agreement and the landlord's agent testifies that the landlord did not put this in the agreement because the tenants assured the landlord they did not smoke.

The tenant disputes the landlord's claims. The tenant testifies that the landlord knew the tenant smoked from day one as the tenant sat with the landlord and had a cigarette in front of the landlord. The landlord already had poor health and told the tenant he had problems with his throat. The tenant testifies that when the landlord asked the tenant not to smoke inside the unit the tenant started to smoke outside the unit. Later the landlord got a hottub installed upstairs and if the landlord has asthma then hot tub could contribute to that as it is wet hot air instead of dry air which would be better for the landlord's health condition.

The tenant testifies that the landlord knew the tenant had a friend living in the unit after her boyfriend moved out as the landlord asked this friend to do some work for him. The landlord agreed this friend of the tenant could stay in the unit. The tenant agrees that there was one argument between her and her boyfriend who was the other tenant named on the agreement, as this boyfriend assaulted the tenant and then left the unit. There was another argument between the tenant's guest and his girlfriend but any other disagreements have been during the day and part of normal living. The tenant testifies

that there is no sound proofing between the units and the landlord can hear everything that goes on in the tenants unit and the tenant can hear everything in the landlords unit.

The tenant testifies that the landlord has called the police out twice. The first time they came they noted that the noise was from the landlord's unit and not the tenant's unit. The second time the police came out they said that the landlord wants to get rid of the tenants without going through the proper channels.

The landlord's agent testifies that the tenant and her guest are also smoking marijuana in the unit and the smell comes into the landlords unit. The landlord's agent testifies that he has smelt marijuana from the tenants unit.

The tenant disputes the landlords claim. The tenant testifies that they do not smoke marijuana and the police have been in the unit many times since the tenant was assaulted by her boyfriend and the police have never found any marijuana in the unit or commented on a smell of marijuana.

The landlord's agent testifies that the tenant burnt out the hot water tank and the landlord had to enter the unit to replace the tank. The tenant disputes this and testifies that the landlord has entered the tenants unit without notice or permission many times. When the plumber came to replace the hot water tank the plumber said the tank was very old and that it was not the tenants fault the tank burnt out.

The parties agree that they have both filed an application for Dispute Resolution concerning a 10 Day Notice and a One Month Notice along with other issues. The parties agree that there is another hearing scheduled for January 06, 2014 to hear those applications.

The landlord's agent asks who will be held responsible if the landlord dies because of the tenants affect on the landlord's health

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 and the landlord's agent have provided sworn testimony and I have a note from the landlord's doctor in documentary evidence concerning the landlord's asthma. The tenant has contradicted the landlord's testimony and that of the landlord's agent and the tenant testifies that the landlord's health condition could be a pre-existing condition or exasperated by the landlord's use of his hottub. Consequently, when one party contradicts the evidence of the other party then 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 the hearing to be held on January 06, 2014.

The tenant has agreed to ensure that she and any guests do smoke outside the unit for the duration of the tenancy.

Conclusion

For the above reasons I dismiss the landlord's application for an early end to tenancy and an Order of Possession.

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 03, 2013

Residential Tenancy Branch

