



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Emergency Aid Society
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 has requested an Order of possession based on an early end of tenancy and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord, J.D. provided affirmed testimony that copies of the Application for Dispute Resolution, Notice of Hearing and evidence were posted to the tenant's rental unit door on February 26, 2014. Service occurred between 5 and 6 p.m., with a building attendant, N.W. present as a witness. The building attendant told the residential coordinator that the tenant later talked with her about the paperwork.

These documents are deemed to have been served on the 3rd day after posting, in accordance with section 89 and 90 of the Act; however the tenant did not appear at 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?

Background and Evidence

The tenancy commenced in 2010. The tenant rents a single occupancy room in a one hundred year old, wood-frame building that houses eighty people. Many of the occupants of the building have disabilities, mobility problems, and mental illness and are elderly.

The landlord submitted copies of the following documents:

- January 23, 2014 letter warning the tenant that there had been reports of him burning wires and plastic in his room; that he had been warned and that this activity placed the safety of the entire building at risk;
- February 13, 2014 hand-written report from a security guard; a formal incident report and a incident report for non-violence outlining the tenants reaction when told he could not bring wire and metal into the building, police were notified and spoke with the tenant;
- February 18, 2014 letter to the tenant from the residential coordinator informing the tenant that reports had been made in relation to him burning wires and plastic in his room, that the amount of garbage and clutter in his room exceeded safety standards, that the tenant had failed to clean his room as agreed and that if he did not deal with the matters other housing options would be required; and
- February 20, 2014 report from a security guard indicating that tenant had entered the building with wires in his hand, the tenant said "I have wire here and I'm going to cook and burn it." Several minutes' later smoke was coming from the tenant's room; the guard responded and observed pieces of wire burning on the stove. The residential manager was informed and arrived to take photographs.

The landlord said that on February 20, 2014 the tenant had been caught burning wires in the common kitchen area, that the tenant was using an acetylene torch.

On February 20, 2014 the landlord issued a notice of entry and on February 21, 2014 opened the door to the room and took photographs.

The landlord said the room was too full of items to enter. Eight photographs of the room were supplied as evidence. The photographs showed a room full of belongings, many of which appeared to be combustible, such as bedding. Several tables were piled with wires and electronic devices.

The landlord said that they attempt to work with tenants, to preserve tenancies, but that the tenant's refusal to cease burning wires, the use of a torch, the smoke and strong odours of burning all place other occupants of the building at risk. The landlord is worried that a fire could break out as a result of the tenant's activities and suspects the tenant has been using a torch in his room. The landlord said that the tenant appears to be using the room to strip wires and that most of the time he stays elsewhere. The landlord said the tenant has refused to communicate with them and respond to their requests he alter his behaviour.

The landlord said there were multiple complaints made by other occupants, but none were willing to come forward to the hearing or place their concerns in writing. The staff has also had a number of conversations with the tenant that were not formally recorded.

On February 26, 2014 the landlord issued the tenant a 1 month Notice to end tenancy for cause and an application was made requesting an early end to the tenancy.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that they have 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, the security reports, letters to the tenant and photographs, I find, on the balance of probabilities, that the landlord has met that burden.

Section 56 of the Act provides the reasons that may support an early end of the tenancy, without the benefit of a Notice ending tenancy:

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
- (iii) put the landlord's property at significant risk;*
- (iv) engaged in illegal activity that*
 - (A) has caused or is likely to cause damage to the landlord's property,*
 - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- (v) caused extraordinary damage to the residential property*

I have considered the landlord's attempts, as early as January 23, 2014 to inform the tenant that burning material in his room was not permitted. The landlord has taken what I find to be, initially, a less aggressive approach to the tenant's behaviour and it was not until there was evidence of further burning, that the landlord issued another warning letter and then entered the unit to view the state of the room.

From the evidence before me I find, on the balance of probabilities that the tenant has engaged in behaviour that could seriously jeopardize the security, safety or physical well-being of other occupants and the residential property. In no case would burning wires and plastic in a room be considered a reasonable activity. This is an older wood-frame building that houses numerous occupants, some of which have special needs. A fire could place those occupants at significant risk; the tenant appears to have been oblivious to this risk. Even though a 1 month Notice to end tenancy has been issued

after the landlord initially became aware of the tenant's activities, I find that the repeated burning of materials supports an early end of this tenancy.

In the circumstances I find it would be unreasonable and unfair to require the landlord to wait for the February 26, 2014 Notice to end the tenancy for cause to take effect. This decision is based on what I find is the paramount need to respect the safety and security of the other occupants of the building.

Therefore I find that the landlord is entitled to an Order for possession that is effective immediately. An Order has been issued and may be filed in the Supreme Court and enforced as an Order of that Court.

As the landlord's Application has merit I find that the landlord is entitled to filing fee costs in the sum of \$50.00.

Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to filing fee costs.

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: March 07, 2014

Residential Tenancy Branch

