



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *ET, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to section 56 of the *Residential Tenancy Act*, for an order to end the tenancy early and obtain an order of possession. The landlord also applied for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

The landlord stated that on February 27, 2014, he served the tenant with a notice to end tenancy for cause and shortly after the tenant filed an application to dispute the notice. The parties are scheduled to attend a hearing on April 24, 2014, to address the tenant's application to dispute this notice. This hearing only dealt with the landlord's application to put an early end to tenancy.

Issues to be decided

Does the landlord have cause to end the tenancy early?

Background and Evidence

The tenancy started on February 15, 2011. The rental property contains a house and a detached garage. Both parties agreed that at the time the parties entered into a tenancy agreement, the tenant informed the landlord of his intentions to grow medicinal Marijuana for his personal needs. The landlord was required to sign a form authorizing the tenant the use of her property for this purpose. The landlord did so; the tenant acquired his license to grow plants in April 2011 and started doing so in May 2011.

The landlord renewed her insurance on the property on March 15, 2011. She stated that she was not aware of the need to inform the insurance company about the growing facilities in the detached garage. The following year the landlord signed the form required for the renewal of the license to grow marijuana and also renewed her insurance for another year, without informing the insurance company about the growing facilities on the property.

The landlord stated that In April 2014, Health Canada ruled that license holders were no longer allowed to grow their own supply of medical Marijuana. This ruling was appealed and amended to allow license holders to grow their own supply until the matter went to trial, which will take place sometime at the end of 2014.

When the landlord went to renew her insurance on the rental property in February 2014, she noticed that there was a term regarding restrictions. This term stated that the *“policy is void if your tenant cultivates, harvests, processes, manufactures, stores, distributes or sells any marijuana or other narcotic”*

On February 24, 2014, the landlord informed the tenant that due to the growing of Marijuana on the property, the insurance costs were a lot more and that she wanted the tenant to pay the difference. On February 27, the insurance broker informed the landlord that all of their market declined to insure this property and stated that insurance would only be available once the growing facility was completely dismantled. The letter asked the landlord to try to obtain coverage from a specialty market.

On February 28, 2014, the landlord received a letter from the insurance broker notifying her that the insurance policy for this property was cancelled. The landlord stated that in order to get insurance she needed to get an electrical inspection done, obtain a copy of the tenant's license to grow medical Marijuana and proof of the tenant's insurance.

The landlord made this application on March 11, 2014. On March 12, the landlord served the tenant with a formal notice of an electrical inspection that was to be conducted on March 17, 2014. The tenant stated that that particular date was not convenient for him and he emailed the landlord offering an alternative date. The landlord stated that he did not get the email. The inspection did not get done because the tenant refused entry to the landlord and the inspector, on March 17, 2014.

The landlord testified that since March 15, 2014, the property is not insured and this may have disastrous financial results in the event of an accident. The landlord also testified that her mortgage provider requires the property to be insured. The landlord has applied for an early end to tenancy in order to obtain insurance to enable her to protect her property.

The tenant argued that the landlord did not carry out her due diligence prior to the start of the tenancy and that it was unfair to end the tenancy based on the inability to get insurance. The tenant stated that he had incurred some expense to put the operation together and would not have done so, if the landlord had not given him permission to set it up. The tenant testified that the landlord had assisted him in obtaining his license to grow medical Marijuana by authorizing him the use her property for this purpose.

Analysis

Section 56 is an extraordinary remedy that is reserved for situations in which there is a clear and present danger, or a genuine threat of imminent harm of such an extreme nature that it would warrant immediate intervention and removal of the tenant. In addition to proving that there is cause to end the tenancy, in an application of this nature the landlord must clear a second hurdle. 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” .

Based on the documentary evidence and testimony of the parties, I find that at this time, without insurance on the rental property, there is a threat of a financial loss to the landlord in the event of an accident. In the absence of changes to the growing facility and based on the uneventful operation of the facility since May 2011, I do not find that there is a threat of imminent danger or harm of an extreme nature that would warrant immediate intervention and removal of the tenant.

However it is the landlord’s right to protect her property and therefore I order the tenant to cooperate fully with the landlord in her attempts to gather the documents that are required to obtain insurance. The landlord made efforts to carry out an electrical inspection on March 17 and must continue to pursue the requirements of the specialty market in order to obtain insurance.

Based on the evidence and testimony of both parties, I am not persuaded that it would be unreasonable or unfair for the landlord to wait for the hearing scheduled for April 24, 2014 to determine whether the tenancy will end pursuant to the one month notice to end tenancy. Therefore, I dismiss the landlord’s application to end tenancy early.

Conclusion

The landlord’s application is dismissed and she must bear the cost of filing 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: March 27, 2014

