



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 a landlord's application for an early end of tenancy and Order of Possession under section 56 of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and an Order of Possession be provided to the landlord?

Background and Evidence

The tenant moved into the two-bedroom rental unit in June 2013 and is required to pay rent on the 1st day of the month. The amount of rent payable by the tenant was in dispute.

On April 7, 2014 the landlord filed this application for an early end of tenancy, citing a fire hazard as the reason for making this application.

During the hearing, I described the purpose of the hearing based upon the Application before me and asked the landlord to describe the issues he is having with the tenant. The landlord spent considerable time describing issues with respect to rent payable by the tenant and cable services. When I reminded the landlord this hearing was to deal with an emergency situation the landlord began describing scenarios where the tenant has left the stove elements on maximum, along with the heaters in the rental unit, and the microwave. The landlord submitted that in doing so the tenant is putting the property at risk of fire which may harm the landlord's family living in the unit above.

The landlord was asked to provide dates and times and describe how he became aware of the above described situation. The landlord provided changing testimony as to dates and times he observed the stove elements turned on maximum. The landlord also provided changing testimony as to whether the tenant was home during such times. Finally, the landlord explained that he observed the stove elements and heaters as being turned on by looking through various windows of the rental unit at 3:30 a.m. and other times.

The landlord testified that the police and the fire department attended the property at the request of the landlord but that they could not provide any assistance as such matters need to be dealt with through the Residential Tenancy Branch. The landlord testified that the police did enter the rental unit on April 5, 2014 to check on the landlord's concerns and that they turned off the stove elements while the tenant was out. Further, when the fire department attended the following day the tenant was argumentative with the fire department crew.

The landlord also asserted that the tenant has removed the smoke detector from the unit.

The tenant denied that he leaves the stove elements and heaters turned on maximum while he is out. The tenant also questioned how he could leave the microwave running while he is out since the microwave will only cook for a limited amount of time.

The tenant described a situation of April 5, 2014 where he came home to find evidence somebody had been in his unit. Then on April 6, 2014 the fire department attended the property in response to a false report of a fire by the landlord and the tenant was merely heating up his supper.

The tenant denied removal of the smoke detector, explaining that the only evidence of a smoke detector is the base attached to the ceiling but that the smoke detector itself has been missing since he moved in.

The tenant was of the position the landlord has filed this Application in an attempt to avoid his obligations to repair the unit and provide services to the tenant. The tenant submitted that problems began after he attempted to serve the landlord with the Application for Dispute Resolution he filed on March 14, 2014. Since then the landlord has attempted to harass the tenant into leaving, including the fabricated allegations contained in the landlord's Application for an early end of tenancy.

I confirmed that on March 14, 2014 the tenant filed an Application for Dispute Resolution and on March 20, 2014 the landlord filed an Application for Dispute Resolution. Both applications identify rent and the validity of a 10 Day Notice to End Tenancy for Unpaid Rent as issues that need to be resolved, among other things, and is set for hearing on May 1, 2014.

Both parties pointed to each other as engaging in disruptive behaviour. The landlord asserting the tenant slams doors and the tenant asserting the landlord's family stomps and jumps in their floor to annoy him.

Analysis

Section 56(2) of the Act permits an Arbitrator to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied that:

- (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, and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

[my emphasis added]

The landlord bears the burden to prove the tenant has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. The burden is high as this provision is intended to apply in the most severe circumstances.

In the absence of evidence to corroborate the landlord's position, I find the landlord's inconsistent and disputed allegations insufficient to conclude the tenant has conducted himself in such a way as to warrant an order ending this tenancy early. Upon hearing from both parties, I find it more likely that the real dispute between the parties revolves around rent, cable services, and repair issues. Therefore, I deny the landlord's request for an order ending the tenancy early and I do not provide the landlord with an Order of Possession.

As the landlord was informed during the hearing, dealing with issues such as rent, cable services and repair issues during a hearing scheduled to deal with emergency situations is inappropriate and an abuse of process. The parties must wait until May 1, 2014 to deal with issues pertaining to rent, cable and repairs. Until then, I cautioned the parties to conduct themselves in accordance with the requirements of the Act and that includes refraining from harassing the other party, violating the tenant's right to privacy, or putting the property at risk.

Conclusion

The landlord's request for an early end of tenancy and Order of Possession has been dismissed.

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: April 17, 2014

Residential Tenancy Branch

