



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and an Order of Possession. The tenants did not appear at the hearing. The landlord testified that he gave two copies of the hearing documents to the tenants' adult son, who resides with the tenants at the rental unit, within three days of filing this Application for Dispute Resolution. I was satisfied the landlord served the tenants in a manner that complies with the Act and I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

Has the landlord established the tenancy should end early and the landlord provided with an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy commenced February 1, 2014. The tenants reside in the upper level and the lower level is occupied by other tenants. The tenants in both unit also share common areas.

The landlord discovered the tenants were been smoking on the property and have pets, contrary to their tenancy agreement. The landlord submitted that the lower tenant is asthmatic and is highly allergic to smoke and pet hair and dander. Since the tenants have moved in the lower tenant's symptoms worsened.

I heard that on March 8, 2014 the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenants with a stated effective date of April 30, 2014. The 1 Month Notice was issued due to the tenants smoking and having pets and its effect on the lower tenant's health. The tenants did not file an Application for Dispute Resolution to dispute the 1 Month Notice.

Also on March 8, 2014 the landlord was called by the RCMP. The RCMP advised the landlord that there was a noise disturbance at the property caused by the subject tenants.

On March 13, 2014 the landlord filed an Application for Dispute Resolution seeking to enforce the 1 Month Notice, among other things. That dispute is set to be heard tomorrow morning. Since filing the above described Application for Dispute Resolution, the landlord heard from the tenant's roommate that he was assaulted by the tenants on March 21, 2014. Also, the tenants did not pay rent for April 2014 and on April 1, 2014 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenants. The tenants did not pay the rent and continue to occupy the rental unit.

The landlord was of the belief that unpaid rent may be dealt with by way of this hearing. I declined to deal with that issue since this hearing was scheduled to deal with an early end of tenancy and not a monetary claim.

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 tenants have acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. An Application for an early end of tenancy is intended for circumstances so severe and urgent that it is unreasonable to wait for a 1 Month Notice to take effect. The landlord's burden is high as this provision is intended to apply in the most severe of circumstances.

In this case, I heard that a 1 Month Notice has been issued, and taken effect, so as to deal with most of the same reasons put forth under this Application for an early end of tenancy. Therefore, I find part (b) of the above described provision have not been met with respect to pets and smoking at the property and I do not end the tenancy early for these reasons.

I do not end the tenancy early for the alleged assault that took place on March 21, 2014 since I was only provided hearsay evidence. Further, if an assault did take place, the landlord waited another three weeks before filing this Application, suggesting the allegation was not so severe as to warrant filing an Application for an early end of tenancy much sooner.

Given the above, and considering a hearing is set for tomorrow to deal with enforcement of the 1 Month Notice, I decline to grant the landlord's request for an order for an early end of tenancy and Order of Possession.

Conclusion

The landlord's application for an early end of tenancy and an Order of Possession requested under section 56 of the Act have been dismissed.

The hearing set for tomorrow morning to deal with the 1 Month Notice, among other things, remains as scheduled.

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: May 06, 2014

Residential Tenancy Branch

