



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for and early end to this tenancy and the issuance of an Order of Possession.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant said that she has received a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the 2 Month Notice) both apparently dated May 28, 2014. The tenant also confirmed that on June 1, 2014, she received a copy of the landlord's dispute resolution hearing package which the landlord said she placed under the tenant's door on May 28, 2014. Although service of an application for dispute resolution by placing it under a tenant's door is not an approved way of serving such a document, I am satisfied that the tenant did receive the landlord's hearing package, including the landlord's application for dispute resolution, and was prepared to respond to the landlord's application for dispute resolution. As such, I am satisfied that the tenant has acknowledged having been served with the landlord's dispute resolution hearing package and the landlord's written evidence.

The tenant gave undisputed sworn testimony that a hearing to consider her application to cancel the landlord's 1 Month Notice is scheduled for July 31, 2014. After the hearing, I was able to confirm that the July 31, 2014 hearing is scheduled to consider both the tenant's application to cancel the 1 Month Notice and the landlord's application for an Order of Possession based on the 1 Month Notice.

Issues(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?

Background and Evidence

This periodic tenancy started on January 1, 2014. The tenant is one of three tenants in the basement of the landlord's home. The tenant and the two witnesses called by the landlord who also live in their own rooms in this basement share a common kitchen and

bathroom. The landlord lives in a separate living unit upstairs. Monthly rent for the tenant's basement room is set at \$400.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$200.00 security deposit paid on December 29, 2013.

The landlord's 1 Month Notice, the only notice to end tenancy provided by the parties, cited the following reasons for seeking an end to this tenancy for cause:

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

At the same time as the landlord issued the 1 Month Notice, the landlord also issued a 2 Month Notice. She said that the behaviours of the tenant have prompted her to decide that she no longer wants to rent the basement to tenants. She said that she intends to use the basement herself. The landlord testified that she has issued 2 Month Notices to the other two tenants who are in the process of finding alternate accommodations.

In the Details of the Dispute section of the landlord's application, the landlord described her application for an early end to tenancy in the following terms:

The tenant... is very violent. She is threatening the safety of roommates and landlord. She has damaged some places in the house and she is claiming to do more damage to the house.

In her written and photographic evidence, the landlord maintained that her other two basement tenants "frequently complain about her misbehaviour." The landlord maintained that the other two tenants are scared of the tenant. She alleged that the other tenants were afraid for their lives. She submitted an unsigned letter from one of the other two tenants in the basement. The landlord also claimed that the tenant had "assaulted her" and threatened her life. Although she referred to a police file number, she did not provide the contents of that file or anything else from the police. She did not dispute the tenant's claim that the police never met with her about this matter. The landlord also entered written and photographic evidence and sworn oral testimony that the tenant removed the thermostat in the basement area of this building and "violently used a knife to stab the wall as a sign of frustration" with the other two tenants.

The landlord also entered into written evidence edited and undated versions of screenshots of text messages from the tenant. One of these maintained that the author of the message, the tenant, would cause thousands of dollars of damage to the rental unit if the landlord did not return her security deposit. The tenant denied having used the wording claimed by the landlord and said that the version entered into written

evidence by the landlord was an edited version which did not accurately reflect their full exchange. The landlord also noted that the other female tenants in this rental unit are concerned for their safety because the tenant leaves the door to the rental property open and unlocked. The landlord also indicated that the other two tenants had complained about the tenant's use of the bathroom and her failure to flush the toilet. The landlord and the other tenants also complained that the tenant may be smoking marijuana in her room. The landlord maintained that the other two tenants had refused to pay their rent until the tenant vacated the rental unit.

At the hearing, the two basement tenants gave sworn testimony regarding their concerns about the tenant's actions. They confirmed that they are in the process of vacating the rental unit after receiving the landlord's 2 Month Notice. They both complained of the smell of marijuana in the rental unit and raised a number of concerns about the tenant's actions. One claimed that the tenant leaves urine on the toilet seat, while another objected to the tenant's use of her towel at times. They also complained about the tenant's use of profanities and her occasional failure to shut and lock the door to the basement area of this building. One of the tenants complained of the tenant's use of the laundry appliances at 5:00 a.m. when others in the house are sleeping and in contravention of the agreed rules of this house.

The tenant's witness testified that she has been a landlord herself for a number of years and was asked by the tenant to intercede with the landlord because the landlord appeared unaware of the requirements of the *Act* with respect to ending tenancies. This witness observed that the landlord has displayed little regard for her responsibilities as a landlord and has tried to evict the tenant any way possible. She said when the landlord did eventually start using proper RTB forms to end the tenancy, the landlord issued two notices in short order and shortly thereafter requested an early end to this tenancy. She said that the landlord only issued the early end to tenancy notice when she discovered that by issuing the 2 Month Notice, she had committed to allow the tenant to remain in the rental unit rent-free for the final month of her tenancy.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*

- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

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 [landlord's notice: cause]... to take effect.

Based on the testimony of both parties, their witnesses and my review of the landlord's written and photographic evidence, the only such evidence provided for this hearing, I find that the landlord has failed to prove that any of the circumstances described above exist such that it would be unreasonable or unfair to the landlord or other tenants to serve the tenant with a notice to end tenancy under section 47 of the *Act* and wait for that notice to take effect. There is a July 31, 2014 hearing scheduled for this tenancy. The tenant testified that she is in the process of seeking alternate accommodation, which she hopes will enable her to vacate the rental unit by July 31, 2014.

Although the two other tenants who share the basement with the tenant testified at this hearing, they are also in the process of vacating this rental unit. I find that the concerns attributed to them by the landlord were much more severe than the actual sworn testimony either of them provided at this hearing. Complaints such as those raised by the landlord's two witnesses involving who flushes and does not flush toilets, who uses other tenant's towels, and whether people use foul language do not form the basis for a successful application to end a tenancy early. While the other basement tenants clearly do not get along well with the tenant, this on its own falls far short of the standard required to end a tenancy early and before a hearing of applications regarding the 1 Month Notice can be considered on July 31, 2014.

I heard disputed sworn testimony regarding whether or not the tenant smokes marijuana in the rental unit. The tenant said that she is a licensed medicinal marijuana user, but takes great care in only smoking it in the facility where she obtains this product. I also heard disputed testimony regarding whether or not the tenant:

- stuck a knife in the wall of the rental unit;
- tore off the thermostat from the wall;
- leaves the door open and/or unlocked; and
- threatened the landlord with damage to the rental unit.

The relatively weak sworn testimony provided by the tenants and their assurance that they are in the process of moving out themselves leads me to find that there would be no unreasonable danger presented by allowing this tenancy to continue until the

standard process for considering the notices to end tenancy are considered by an Arbitrator appointed under the *Act*. Other than her assertion that she feels threatened, the landlord has produced little evidence that would demonstrate that the tenant is violent, as the landlord claims. The landlord's rapid issuance of two notices to end tenancy and an application for an early end to this tenancy lend credibility to the testimony given by the tenant's witness. I find that the landlord's actions and her written evidence suggest that the landlord is trying whatever mechanisms might be available to her to remove this tenant from the rental unit.

It may indeed be possible that the tenant's actions have given the landlord sufficient reason to end this tenancy for cause. However, that decision will be reached after another Arbitrator considers the evidence submitted by both parties with respect to the applications submitted by both parties regarding the 1 Month Notice. An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution. As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect and applications by the landlord and the tenant are currently scheduled for a hearing, I dismiss the landlord's application for an early end to this tenancy.

Conclusion

I dismiss the landlord's application with the effect that this tenancy continues.

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: June 23, 2014

Residential Tenancy Branch

