



Dispute Resolution Services

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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 under section 56 of the Act. The tenant did not appear at the hearing. The landlord testified that the tenant was served with the hearing package in person on June 19, 2014 outside of the rental unit. Based upon the landlord's undisputed testimony, I accepted that the tenant was served with notification of this proceeding in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

Has the landlord established a basis for ending this tenancy early and granting the landlord an Order of Possession under section 56 of the Act?

Background and Evidence

The landlord orally described the following circumstances in support of his request to end this tenancy early and an Order of Possession:

- In May 2014 the tenant's former boyfriend attempted to enter the rental unit with a hammer. The police attended and discovered stolen property. The tenant assured the landlord that her former boyfriend would be leaving and that this sort of thing would not happen again. The landlord accepted the tenant's assurances and "let it slide".
- In May/June 2014 the landlord was contacted by the police to set up surveillance on the rental unit.
- On June 16, 2014 the tenant's current boyfriend assaulted a person with an axe at the bus stop located near the residential property. The street was evacuated and approximately 30 police officers, including the SWAT team, surrounded the property for several hours.

Since the incident of June 16, 2014 the landlord has not observed the tenant's boyfriend coming or going from the residential property but explained he has only been there on two occasions: to serve a 10 Day Notice to End Tenancy for Unpaid rent in June 2014 and in serving the hearing package for this proceeding.

The landlord testified the rental unit is in a duplex style building and the other side of the duplex is currently vacant. The landlord has been unable to secure tenants for the other side of the duplex and suspects that the activity taking place in the rental unit is the reason for this.

The landlord testified that neighbours have complained about occupants of the rental unit yelling and leaving dog feces in the neighbourhood. As well, the tenant's boyfriend allegedly assaulted children in the neighbourhood.

Given the incidents that took place in May and in June 2014 the landlord asserts the tenant attracts a criminal element to the property and the neighbourhood.

The landlord did not provide any documentary or photographic evidence in support of this application but did suggest I search the internet for news footage of the June 16, 2014 incident.

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, or a person permitted on the property by 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 of circumstances.

In the case before me, the landlord described circumstances involving the tenant's boyfriends, current and former, and I am satisfied the tenant's boyfriends are persons permitted on the property by the tenant. As such, the conduct or behaviour of the tenant's boyfriends may be a basis for ending the tenancy where the circumstances described under section 56(2)(a) and (b) apply.

With respect to the incident involving the tenant's former boyfriend in May 2014, I find the landlord had communicated to the tenant that he would not take action to end the tenancy based upon that incident. Therefore, I do not end the tenancy early based upon this incident.

I find the police request to set up surveillance on the property does not meet the criteria for ending the tenancy as set out in section 56 of the Act.

The landlord also asserted that a very troubling incident occurred at the bus stop near the residential property, and assaults elsewhere in the neighborhood. An assault is an illegal activity; however, in order to end the tenancy I must be satisfied that such activity has an effect on the tenancy.

Although the landlord suggested I search the internet to view news footage related to the June 16, 2014 incident, it is not the role of the Arbitrator to investigate or search for evidence that is to be provided by the parties involved in the dispute resolution

proceeding. Thus, my findings are based solely upon what was presented to me orally during the hearing and in the details of dispute contained in the landlord's Application for Dispute Resolution.

I did not hear any testimony and I was not provided evidence by the landlord that the events that took place on June 16, 2014 or the assaults on children in the neighbourhood occurred on the residential property or otherwise impacted the occupants of the residential property; damaged the property; or, jeopardized a lawful right or interest of the landlord.

Residential Tenancy Policy Guideline 32: *Illegal Activities* provides policy statements with respect to ending a tenancy where illegal activity is alleged. The policy guideline provides, in part:

The illegal activity must have some effect on the tenancy.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

If a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity. The tenant may be found responsible for the illegal activity whether or not the tenant was actually present when the activity occurred, so long as it was in the rental unit or on the residential property.

[my emphasis added]

Based upon the requirements of section 56(2) of the Act, the provisions of Policy Guideline 32, and the evidence presented to me, I find the landlord has not established that this tenancy should end early. Therefore, I deny the landlord's request for an Order of Possession and I dismiss the landlord's Application for Dispute Resolution.

Conclusion

The landlord did not provide sufficient evidence to establish that this tenancy should be ended early as provided under section 56 of the Act and the landlord's Application for Dispute Resolution 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: July 03, 2014

Residential Tenancy Branch

