



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlord's three agents and the tenant.

I note that at the start of the hearing the tenant indicated that he had received a 1 Month Notice to End Tenancy for Cause and he submitted that he had been trying to contact the landlord's corporate office to determine what the notice was but that no one could confirm anything about the notice.

The tenant also stated that he was contacted by a woman with the same first name as one of the landlord's agents but with a different last name who stated that she was out of the country and he would have to wait until she returned. The landlord's agents submit that there was no one by that name working for the landlord.

I confirmed for both parties that if the landlord had issued a 1 Month Notice to End Tenancy for Cause that this was not before me in this hearing and the parties would need to deal with that as a separate issue should I dismiss this Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early and without notice and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 56, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in February 1, 2006 as a month to month tenancy with a current rent of \$981.00 due on the 1st of each month with a security deposit of \$400.00 and a pet damage deposit of \$400.00 paid.

The landlord submits that on July 30, 2014 the tenant was accused of sexual assault by one of the neighbouring tenants within the residential property. The landlord has submitted an undated email from the other tenant's iPhone that states:

"On Wednesday, July 30th, 2014 at 3:20 pm, I was sexually assaulted by my apartment neighbour [tenant's name]. He was arrested and has since been officially charged with sexually assault. He's was released from jail on some conditions. He is not aloud within 2 blocks of [residential property address] or he will be put back in jail."

The accusing tenant did not attend the hearing. While the landlord did acknowledge that they had not arranged for accusing tenant to attend the hearing they did attempt to contact her during the hearing to see if she would be available to provide testimony. The landlord could not reach her at that time. None of the landlord's agents had direct knowledge of any events or incidents involving the two tenants.

The landlord submits that police could not release any information but that they did have a file number with the local police. The landlord acknowledges that the tenant was allowed to return to his rental unit with police to obtain some personal possessions.

The tenant acknowledges that he has been charged as described and that he was released from custody after he signed an undertaking that did restrict his ability to attend the residential property. He states that he was informed that if he broke any of the conditions in the undertaking he would be put in jail for 2 years.

The tenant states that he has no intention of breaking any of the conditions of the undertaking and as a result he has moved into his parent's home. His parents live in another community that is separated from the community that the rental unit is in by a major body of water. His parents address was used by the landlord to serve the tenant notice of this hearing and the tenant acknowledged he received these documents at that location.

The tenant also submits that he did not sexually assault the neighbouring tenant. The tenant recounted the events from his perspective. I have not written the tenant's description of events, however, as these matters are related to pending criminal proceedings.

Analysis

Section 56 of the *Act* allows a landlord to request an order of possession to end the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (1 Month Notice to End Tenancy for Cause) if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has

- 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, or
 - 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 rental unit or residential property;
- b) And 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 to take effect.

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

As the burden, in this case, is on the landlord to provide sufficient evidence to establish the grounds to end the tenancy and to do so without notice and the tenant disputes any of the charges, I have considered the email as additional evidence in support of the landlord's position.

However, as the email from the neighbouring tenant is not a signed declaration or notarized affidavit; none of the landlord's agents have any direct knowledge of events that led to the neighbouring tenant's accusations; and nothing has been proven in a court of competent jurisdiction regarding the charges of sexual assault, I find the landlord has failed to provide sufficient evidence to establish that they have cause to end the tenancy.

Further, I find that even if the landlord did provide sufficient evidence to establish that there is cause to end the tenancy the tenant has signed an undertaking that he will not return to the property while the matters are before the courts and that he has taken steps to ensure that he does not.

As such, I find there is no evidence to support the need to end the tenancy any sooner than would be allowed had the landlord issued a 1 Month Notice to End Tenancy pursuant to Section 47 of the Act.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety. I also find the tenancy remains in full force and effect.

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: August 20, 2014

Residential Tenancy Branch

