Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   ET FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution, seeking an order to end the tenancy early, receive an order of possession, and to recover their filing fee.

The female landlord, H.B. and the tenant attended the hearing and gave affirmed testimony. The hearing process was explained to the parties and an opportunity to ask questions about the hearing process was provided to the parties.

The tenant testified that he did not receive documentary evidence from the landlords prior to the hearing. Landlord H.B. stated that she served the tenant with evidence personally with her father; however, her father was not present at the hearing to support her testimony. In addition, as the landlords' documentary evidence was not served in accordance with rule 3.2 of the Rules of Procedure, the landlords' documentary evidence was excluded from the hearing. The parties did provide oral testimony in evidence. I have considered the testimony provided and have only included that which is relevant to the matter before me.

Issues to be Decided

- Are the landlords entitled to end the tenancy early and obtain an order of possession?
- Are the landlords entitled to recover their filing fee?

Background and Evidence

The parties agree that a verbal tenancy agreement began on January 1, 2012.

The landlords have applied for an order of possession to end the tenancy early based on the tenant smashing the kitchen window, using marijuana, uttering threats and calling the police on the landlords.

Regarding the broken window, the tenant stated that the brother of the landlord living upstairs broke the window by throwing a wagon at the window when he would not open the rental unit door. The landlord stated that it was the tenant who broke the window.

Regarding threats to the landlord, the tenant denies threatening the landlord with harm or damages. The landlord originally stated that the tenant has not threatened harm, and then changed her testimony by stating that the tenant threatened to kill the landlords. The landlord was asked if she had written down the date of any alleged threats to kill the landlords and she replied, "no". The landlord then changed her testimony by stating that she had written down in front of her two dates of the threats, September 9th and September 10th.

Analysis

Based on the testimony of the parties and on a balance of probabilities, I find the following.

The burden of proof is on the landlords to prove that it would be unreasonable, or unfair to the landlords or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect. 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.

In the matter before me, the female landlord testified that there is another hearing scheduled for October 24, 2014 relating to the landlords' application for an order of possession based on a 1 Month Notice to End Tenancy for Cause.

I find that the landlord's testimony was contradictory. As a result, I find that the landlords have failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the *Act.* Therefore, **I dismiss** the landlords' application in full due to contradictory evidence.

As the landlords did not succeed with their application, I do not grant the landlords the recovery of their filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act.* Pursuant to section 77 of the *Act,* a decision or an order is final and binding, except as otherwise provided in the *Act.*

Dated: September 16, 2014

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Residential Tenancy Branch