



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KST MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 1, 2014, by the Landlord to end the tenancy early, obtain an Order of Possession (hereinafter referred to as ET), and recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to end this tenancy early and to obtain Order of Possession?

Background and Evidence

The Landlord submitted documentary evidence which consisted of, among other things, copies of: a chronological list of events; 10 Day Notices for unpaid rent issued September 2, 2014, August 2, 2014, June 2, 2014, April 2, 2014; a 1 Month Notice issued September 20, 2014; the tenancy agreement; a 1 Month; a July 23, 2014 letter issued to the Tenant; two security company reports; and two witness statements.

It was undisputed that the parties executed a month to month tenancy agreement that commenced on March 1, 2014. Rent of \$575.00 is payable on the 30th or last day of each month and on March 1, 2014 the Tenant paid \$287.00 as the security deposit.

The Landlord testified that the Tenant had been served several 10 Day eviction Notices for unpaid rent and sometime after September 12, 2014 the Tenant approached the

Landlord's resident manager (hereinafter referred to as manager) and told the manager that he might as well serve him with a 30 day notice because the Tenant's benefit claim was not approved. The manager posted the 1 Month Notice to the Tenant's door on September 20, 2014.

The Landlord stated that the manager attended the rental unit on October 4, 2014, knocked on the door, and when there was no answer the manager changed the locks. The Tenant returned to the unit on October 4, 2014 and when he could not gain access he became aggressive towards the manager and the RCMP were called. The Landlord stated that the manager continued to refuse the Tenant access to the unit and told the Tenant he had until October 31, 2014 to remove all of his possessions. During the next few days the Tenant would attend the unit to remove some of his possessions during which the manager would let him have access. The Landlord submitted that the manager would then lock the unit after the Tenant would leave and the manager continued to deny the Tenant possession of the unit.

The Landlord submitted that on October 19, 2014 the Tenant attended the rental unit and told the manager he had nowhere else to live so the manager allowed the Tenant to occupy the unit but told him it was for only the one night. The Landlord said that the Tenant then refused to leave and shortly after October 20, 2014, the power had been turned off.

The Landlord testified that on November 9, 2014 the Tenant went to another tenant's unit where the manager was visiting, and he knocked on the door and then held the door so the tenant could not open it. Then when the tenant let go of the door the Tenant pushed his way into the unit and served the manager with the Tenant's application for dispute resolution and hearing documents for his hearing which is scheduled for December 5, 2014. The Tenant's behavior was described as being aggressive and the RCMP were called to attend.

The Landlord submitted that it was the events of November 9, 2014 which were the basis for their application for an ET. She pointed to section "1.01 D" of the tenancy agreement addendum provided in their evidence which states:

... the resident(s) or any member of the resident's family shall not engage in any criminal activity on the premises or property including but not limited to:

...(d) assault or threatened assault

VIOlation OF THE ABOVE PROVISIONS, WHICH IS A REASONABLE AND MATERIAL TERM OF THE TENANCY AGREEMENT, SHALL BE GOOD CAUSE FOR A NOTICE TO END TENANCY

The Landlord argued that the Tenant's behavior on November 9, 2014, was "aggressive behavior towards the resident manager and the other tenant". The other tenant felt intimidated as described in her written statement at page 22 of the Landlord's evidence.

Late in the evening on November 10, 2014, the Landlord said she received a call from the manager who was very upset that the RCMP had contacted him and told him he could be arrested and charged with break and enter or theft if he did not give the Tenant access to his rental unit. She said the manager told her that he told the RCMP that they might as well arrest him because he was not going to give the tenant access to the unit. The Landlord then contacted the RCMP and after a discussion the Landlord said she decided to grant the Tenant access to the unit on the condition that he have no interaction with the manager. She requested that the Tenant contact her. She stated that the Tenant contacted her on November 13, 2014 and during that conversation he Tenant told her he would be moving out on November 30, 2014.

The Landlord said she arranged for their security company to provide the Tenant with keys and pointed to the security document in her evidence which states the Tenant agreed to return the keys by November 30, 2014. She noted that the Tenant had signed that security document agreeing to those terms.

The Landlord said that despite that verbal agreement for the Tenant to move out November 30, 2014, they decided to go for an application for an ET. Upon further clarification the Landlord stated that their application for an ET was filed because the manager and other tenants do not feel safe with the Tenant being in the building.

The Tenant testified that he did not enter into a verbal agreement to vacate by November 30, 2014. He stated that despite his efforts he has not yet found another place to live. He argued that he had been away from his unit from mid-September 2014 until the evening of October 4, 2014, which is when he returned to find the locks had been changed on his unit. He argued that his rent has been paid for September and October. He noted that he did not receive the 1 Month Notice until October 4, 2014 when it was handed to him in the presence of the RCMP.

The Tenant stated that he was never verbally threatening or physically threatening towards the manager or the other tenant because if he had been the RCMP would have arrested him on November 9, 2014 while they were there. He argued that he had never moved out and all of his possessions were still inside the unit so the manager should not have changed his locks on October 4, 2014.

The Tenant submitted that when he woke up on the morning of November 10, 2014 he found that his power had been shut off so he went to a neighbor's place. When he tried to return to his unit he found that the Landlord had changed the locks to the main entrance into the lobby and had changed the locks to his unit again. He said when the manager refused to let him in he went to the RCMP. The RCMP gave him the Landlord's phone number on November 12, 2014 which he called and by the end of November 12, 2014 he was given keys. He argued he has not agreed to move out and he has not found another place to move to.

In closing, the Landlord confirmed that the locks to the main entrance of the building were changed on November 10, 2014 but she could not confirm if the rental unit locks were changed on that date. She argued that the 1 Month Notice was posted to the Tenant's door on September 20, 2014 and is therefore deemed served even if the

Tenant was not home. She stated that this tenancy should end because the Tenant is physically intimidating to other tenants in the building which is proven by the fact that the Tenant approached the other tenant and asked her why she lied in her witness statement.

The Tenant denied approaching the other tenant(s) and denied knocking on their door. He argued that they accosted him in the hallway.

Analysis

Section 56 of the *Act* allows a tenancy to be ended early, without waiting for the effective date of a one month Notice to End Tenancy, if the Landlord can prove the high statutory requirement that the tenant(s) have breached their obligations under the tenancy agreement or *Act* **and** it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy.

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Section 29 of the *act* provides restrictions for the right of a landlord to enter a rental unit while Section 28 of the *Act* provides entitlement for all tenants to the right of quiet enjoyment.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Upon review of the Landlord's evidence I note that they submitted only the first page of the 1 Month Notice. The second page which lists reasons for issuing the 1 Month Notice was not provided and there was no testimony as to why it was issued. That being said, upon review of the one page of each 10 Day Notice that were provided in evidence, if it was proven that rent had been paid late in the months of April, June, August, and September 2014, then that might constitute a reason for ending the tenancy with a 1 Month Notice under section 47 of the *Act*.

The remaining issues pertain to the Tenant's reaction to the manager's actions of changing the locks on his rental unit door, without having been granted legal possession by issuance of an Order of Possession by the *Residential Tenancy Branch*. Despite issuing the Tenant several eviction notices neither the manager nor the Landlord made any attempt to file an application to seek an Order of Possession. Rather, they proceeded to change the locks on the rental unit and continued to hold the Tenant's possession hostage, which I find to be an egregious breach of the *Act*. I do not find that the Landlord submitted enough evidence to prove the Tenant assaulted the manager or was threatening to the other tenant.

Next, I have considered whether it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect. I am not satisfied that the Landlord has met the burden of showing that it would be unreasonable or unfair for them to wait for a hearing based on their one month Notice to End Tenancy or based on

any of the 10 Day Notices. I am satisfied that if proven, there may be cause to end this tenancy pursuant to section 47 of the *Act*; however, I do not find it is unfair or unreasonable for a one month Notice to End Tenancy to take effect and the Landlord to go through the proper process of making an application to obtain an Order of Possession.

I make this finding for several reasons. First of all, the evidence supports that despite the events which occurred on October 4, 2014, the Landlord delayed in filing their ET application until November 14, 2014. Furthermore I note that the Landlord waited three full days after she spoke to the RCMP on November 10, 2014, the date in which she was informed that the manager's actions could be cause for charges and/or arrest, before she filed her online application for an ET. After consideration of the totality of the events, I find the Landlord's application to be presumptuously suspicious of an attempt at jumping the RTB scheduling cue so that the Landlord's application could be heard before the Tenant's application that is scheduled to be heard December 5, 2014. Accordingly, I dismiss the Landlord's application.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application for an early end of tenancy. This tenancy continues and is of full force and effect, until such time as it is ended in accordance with the *Act*.

I HEREBY ORDER that the Tenant is to remain in possession of the rental unit and all keys until such time as this tenancy is ended in accordance with the *Act*.

No findings of fact or law have been made pertaining to any of the 10 Day Notices or the 1 Month Notice issued September 20, 2014.

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: November 24, 2014

Residential Tenancy Branch

