



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *ET, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to section 56 of the *Residential Tenancy Act*, for an order to end the tenancy early and obtain an order of possession and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The landlord stated that on November 06, 2014, he served the tenant with a notice to end tenancy for cause following an incident which took place earlier that day. The tenant has applied to dispute the notice and the parties are scheduled to attend a hearing on December 15, 2014. Today's hearing is for the sole purpose of hearing the landlord's application made on November 21, 2014 to put an early end to tenancy.

Both parties provided extensive documentary evidence. All parties' testimonies, witnesses and evidence have been considered in the making of this decision. As this matter was conducted over 57 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Does the landlord have cause to end the tenancy early?

Background and Evidence

The tenancy started on September 01, 2014. The rental unit consists of a three level home. This tenant rents the upper two levels and part basement. The basement contains a suite that is rented out separately by the landlord, to an older couple.

The landlord testified that on November 03, 2014 around 10:00 pm, he received a call from the occupants of the basement suite regarding a water leak. The landlord called a plumber who attended to the problem. The landlord testified that on the next day he visited the unit with a contractor to assess the damage and obtain a quote.

The contractor was scheduled to start work on November 06, 2014 at 2:00pm and the tenant agreed that he was notified of this date and time.

As per an email from the landlord to tenant on November 05, 2014, the landlord informed the tenant that he agreed to reduce rent for December 2014 by \$1,000.00 to compensate for inconvenience and higher utility bills due to the restoration work. The tenant replied on November 06, 2014 at 10:00am asking for additional compensation for the cost of increased utilities. The landlord responded at 10:28am informing the tenant that he thought that compensation in the total amount of \$1,000.00 was fair.

Later that afternoon at 2:25pm, the tenant wrote to the landlord stating that unless they came to an agreement regarding the amount of compensation, the restoration workers *'have no rights to come into my property including downstairs or else it is trespassing'*.

The restoration worker JE who attended the rental property on November 06, 2014 testified at the hearing. He stated that the tenant's son DY yelled at him and refused to allow him to work on his area of the basement. DY denied having asked the worker to leave. Both parties agreed that matters got heated between them. However, their testimonies regarding the events that followed were contradictory. JE stated that DY head butted him and DY denied this. The police were called and a report was filed into evidence. The report indicates that DY pushed JE. The report also indicates that all parties eventually apologized to each other for their lack of communication and agreed to work together to complete the much needed restoration.

The landlord also filed letters from the occupants of the basement suite that describe the events of they but did not witness any of the interactions between JE and DY. They stated that DY spoke rudely to them when they asked to speak with his father to inform him about the presence of the worker. They also stated that they received a call later that night from DY who apologized for his impolite behavior earlier that day. DY also wrote a letter of apology to the landlord and assured him that he would cooperate with the landlord to complete the restoration work.

DY testified that he was a student and at the time of the incident, was stressed due to upcoming exams. He agreed that he acted improperly and apologized to the landlord. The tenant offered to withdraw his request for compensation and to ensure that incidents such as what transpired on November 06, 2014 do not happen again.

The landlord was adamant that he wanted the tenancy to end immediately as he stated that the aggressive demeanor of the tenant made him uncomfortable dealing with the tenant and he also feared for the safety of his spouse and the occupants of the basement suite.

Analysis

Section 56 is an extraordinary remedy that is reserved for situations in which there is a clear and present danger, or a genuine threat of imminent harm of such an extreme nature that it would warrant immediate intervention and removal of the tenant. In addition to proving that there is cause to end the tenancy, in an application of this nature the landlord must clear a second hurdle. Under section 56(2)(b) of the Act, in order to establish a claim for an early end to tenancy, the landlord must establish that “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” .

Based on the documentary evidence and testimony of the parties, I find that the altercation was the first incident since the start of the tenancy and that the presence of the tenant on the property does not pose an immediate threat to the safety of the other residents. In addition, I find that the incident occurred on November 06, 2014. The landlord made this application on November 21, 2014. If there was a threat of imminent harm to the landlord or the other occupants of the basement, then the landlord would have made application, immediately after the incident.

Based on the evidence and testimony of both parties, I am not persuaded that it would be unreasonable or unfair for the landlord to wait while a one month notice to end tenancy takes effect. While the tenant may have behaved badly I find that the tenant showed remorse and that the landlord has not established grounds for an extraordinary remedy such as this. For the above reasons, I dismiss the landlord’s application to end tenancy early.

Conclusion

The landlord’s application is dismissed. .He must bear the cost of filing this application.

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: December 04, 2014

Residential Tenancy Branch

