



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy and an Order of Possession pursuant to section 56.

Both parties, the landlord, an employee of the landlord, two tenants and one witness for each party attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to examine one another.

The landlord testified that he served the tenant with his dispute resolution hearing package on January 14, 2015 by posting it on the tenant's rental unit door. The tenant confirmed receipt of the dispute resolution package including documentary evidence. The landlord confirmed receipt of the tenant's documentary evidence prior to the hearing. In accordance with section 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package and the landlord was duly served with the tenant's written evidence, as declared by the tenant.

Issues to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?

Background and Evidence

The landlord testified that this month to month tenancy began on February 1, 2014. The parties agreed that the monthly rent is set at \$1350.00, payable on the first of each month. The landlord continues to hold the tenants' \$675.00 security deposit.

The landlord identified the following reasons for seeking an early end to this tenancy without issuing a 1 Month Notice to End Tenancy for Cause (1 Month Notice) in the Details of the Dispute section of his application for dispute resolution:

Tenant ... upstairs threatened tenant downstairs where police had to be called September 10th around 3pm. [police file number provided here]

The landlord submitted a letter written by the downstairs tenant stating that “the tenants upstairs have been difficult to live with...” and that they have “threaten[ed] to harm me and my children.” The letter also stated that the upstairs tenants have shut off the breakers to the downstairs tenant’s suite leaving that tenant with no power. The downstairs tenant also wrote that, “I have had to phone the [police]” and “I have no quiet enjoyment in my home”.

The landlord testified that, as a result of the complaints of the downstairs neighbour, the landlord attempted to mediate the dispute between the upstairs and downstairs tenants. He testified that the meeting between parties almost resulted in a physical altercation and that the downstairs tenant is even more “fearful”.

The landlord testified to other issues with respect to this tenancy including; late or non-payment of rent; failing to allow access to the laundry by other tenants and regular noise complaints. He testified that, as a result of the downstairs tenant’s power being shut off for periods of time by the tenants, he has been obliged to reimburse the downstairs tenant for having to eat out with her children.

Tenant LH testified that she believes the downstairs tenants are “up to no good”. She cited examples of noise from the downstairs tenants and what she considered suspicious behaviour by the downstairs tenant’s visitor. She also testified that she told the landlord they would not be allowing other tenants to access the laundry as they have personal items stored in that area of the premises. Tenant LH testified that there is an issue with the electrical system within the building and they have not disconnected power to the downstairs tenant’s suite at any point.

Tenant RL testified that he does not believe the police have been called. He further testified that the landlord’s idea of mediating the dispute was to “shove [the downstairs tenant] down his throat” while he was trying to work in his garage.

The downstairs tenant testified at the hearing, stating that, from the day she moved in, she was treated rudely by the upstairs tenants. She testified that, on August 27, 2014, while her mother was babysitting her children, the upstairs tenants banged on her door, swearing, yelling and speaking in a threatening tone. She testified that, on September 3, 2014, while she was in the laundry room, the upstairs tenants banged on the door, stating, “I’m going to get you” and “shut the ____ up”.

The downstairs tenant also testified that, on September 10, 2014, when the landlord attempted to mediate between the two tenants, Tenant RL told her to “muzzle her kids” and threatened to shut the power off in her home “again”. The downstairs tenant testified that, on December 7, 2014, January 9, 2015 and January 16, 2015, her power was shut off. She testified that, when she tries to address any issues directly with the upstairs tenants, they are belligerent.

The downstairs tenant’s partner also testified that he has witnessed Tenant RL “giving [the downstairs tenant] a hard time”, yelling and being angry with her, particularly if she attempts to do laundry within the building.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord’s notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenants have done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord’s property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord’s property;
- engaged in illegal activity that 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

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 [landlord’s notice: cause]... to take effect.

I find that the evidence and testimony provided on behalf of the landlord support the claim that the upstairs tenants at this residential premises have significantly interfered with or unreasonably disturbed another occupant of the residential property. They have

blocked access to common areas, interfered with the electricity to the downstairs unit and they have been both noisy and disruptive in a manner that has impacted the downstairs tenant.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

While I find that there has been a significant level of disturbance, I find that the landlord has failed to prove that any of the circumstances described above exist such that it would be unreasonable or unfair to the landlord or other tenants to serve the tenants with a notice to end tenancy under section 47 of the *Act* and wait for that notice to take effect.

I recognize that the landlord is interested in demonstrating to his other tenants that he is actively pursuing a resolution of the concerns expressed by the other tenants in this building about the tenants. However, an application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution. As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlord's application for an early end to this tenancy.

Conclusion

I dismiss the landlord's application for an early end to tenancy.

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: February 5, 2015

Residential Tenancy Branch