



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an early end of the tenancy, an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord applied for dispute resolution on April 23, 2015 requesting compensation and an early end to the tenancy. On April 27, 2015 the application was corrected to include only a request for an early end of tenancy and an Order of possession.

The tenant confirmed receipt of four hand-written pages supplied with the hearing documents on April 28, 2015.

On April 23, 2015 the landlord submitted 14 photographs as evidence. The tenant said he did not receive this evidence. The tenant said that the only additional evidence he received was given to him several days prior to the hearing.

The landlord confirmed receipt of the tenants' evidence supplied on May 5 and May 6, 2015.

The tenant submitted further evidence on May 7, 2015. Section 3.15 of the Residential Tenancy Branch Rules of Procedure provide, in part:

The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the

Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

As the respondent submitted evidence less than 7 days prior to the hearing that evidence was set aside.

On May 5, 2015 the landlord gave the Residential Tenancy Branch eight pages of evidence and four photographs.

Section 3.2 of the Residential Tenancy Rules of Procedure provides:

3.2 Evidence relating to an Early End to a Tenancy.

When a landlord is seeking an early end to the tenancy, the landlord must submit to the Residential Tenancy Branch all evidence with the application for dispute resolution, or, when applying for dispute resolution online, the next day. All evidence to be relied on at the hearing must be served on the respondent with the Notice of Hearing package described in Rule 3.1 [Documents that must be served].

Therefore, pursuant to section 3.2 of the Rules of Procedure the landlord's evidence that was not served with the application was set aside. There was no evidence before me that the evidence could not have been supplied with the application.

The parties were at liberty to make oral submissions regarding any evidence that was excluded.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Would it be unfair to end the tenancy without the benefit of a 1 month Notice to end tenancy for cause?

Background and Evidence

The tenancy commenced in October of either 2011 or 2012; the year was in dispute. Rent is due on the first day of each month. Neither party confirmed they were in possession of a signed tenancy agreement

The landlord wished to discuss issues that have occurred over the past two years of the tenancy. I explained that when a landlord applies requesting an early end to the tenancy I would hear only the matters related to the reason the early end is sought. Section 56 of the Act was reviewed with the parties and it was explained that an early end to a tenancy does not require the landlord to issue a Notice to end tenancy.

Therefore, I asked that testimony be given in relation to the event that resulted in the landlord requesting the early end. It was explained that if there were long-standing issues a 1 month Notice to end tenancy for cause would be the appropriate method when attempting to end a tenancy.

The landlord described an alleged incident that occurred on April 21, 2015. There was no dispute that the landlord has had fencing materials piled along the side of the home, covering the tenant's sidewalk that gives him access to his unit from the back of the home.

The landlord said she arrived home around 9 p.m. with her nine year old special needs son and 14 year old daughter. The tenant was in the driveway and began yelling at the landlord, saying he wanted the landlord to remove the fencing materials from against the house. The tenant was screaming and intoxicated.

The landlord refused to talk to the tenant and went in the house. The landlord could then hear a "tinkling" sound against the front door. The landlord realized the tenant was removing metal fence posts from the side of the house and throwing them at her front door. The landlord opened the door and saw the tenant throwing the fencing materials into the yard. The tenant had thrown several posts at the door. The landlord told the tenant she would call the police and at this point the tenant picked up two posts and rushed toward the landlord. The landlord's written submission states the tenant had picked up three posts.

The landlord left the house and ran to her neighbours for help. The neighbour came out; the landlord's children were crying. The tenant went into his rental unit. The neighbour had heard the disturbance but had not seen anything. The landlord's written submission indicated that she took her children to the neighbours and left them with the female neighbour while the male neighbour came to her home.

The police came to the home and tried to get the tenant to come to his door. When he would not the police entered the unit from an interior door; they broke the chain lock off in order to enter. The police spoke with the tenant and determined that there was insufficient evidence in support of charges. The landlord stated that her daughter eventually gave a witness statement but the police did not wish to rely on the testimony of a child. The written submission indicated that only the landlord's son has witnessed the incident.

The tenant damaged tile on the front step and dented her front door.

The landlord said that since this time the tenant has been smoking drugs in the home. The tenant is loud at night, disturbing the landlord and her children's sleep. The landlord described other problems, such as the tenant not moving his truck so she could access a trailer in the driveway and a door removed from the entry to the unit.

The landlord said the events on April 21, 2015 were traumatizing for the landlord and her children. The landlord did not realize she could have asked her neighbour to attend the hearing.

The tenant responded that he had made many requests to have the fencing removed from the side of the home. Photographs supplied by the tenant showed the fencing completely covered the access at the side of the home. The tenant removed the fencing from the access and submitted a photograph showing the sidewalk that had been under the fencing. The tenant would come home in the dark and have to use his cell phone to see; the fencing posed a hazard.

The tenant said that on April 21, 2015 he came home around 8 p.m. and the landlord arrived at the same time. He told the landlord he wanted her to look at the fencing and how it was blocking access; the landlord told him to stop complaining. The tenant then began to pick up the fencing materials and moved them onto the landlord's sidewalk.

The landlord came out of the home, yelling at the tenant and threatening to call the police. The tenant went into his unit and was having a shower when three officers broke the interior chain lock and came into his unit. The tenant told the police they were being used and that the allegation was not true.

The tenant said that if three officers questioned him and determined he was no threat and should not be charged, then it is not reasonable for the landlord to allege he is a threat. The tenant said that the officers believed his version of events.

The tenant confirmed that he did move fencing as he was very frustrated but he was not a threat.

The tenant supplied pictures taken of the entry that the landlord said he had broken. Tiles can be seen that appear to be falling off the edges; no broken tiles are visible. The tenant said the entry tiles had been in bad shape for some time.

The tenant said he has been at the rental unit for almost three years and was offended that the landlord took this route. The tenant said he is of no threat to the children. The tenant said that on the first weekend of April he hired the landlord to clean his suite and the carpets. If he did not care about the property he would not have done this.

Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord I find that the landlord has not met that burden.

When a landlord wishes to end a tenancy early cause must be proven as set out in Section 56 of the Act.

Application for order ending tenancy early

56 (1) *A landlord may make an application for dispute resolution to request an order*

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under

section 47 [landlord's notice: cause], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) *The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,*

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(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;

(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 residential property, and

(b) 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 [landlord's notice: cause] to take effect.

(3) *If an order is made under this section, it is unnecessary for the landlord to give*

Proof must be established to a degree that is believable. I must be satisfied, on the balance of probabilities that the tenant has engaged in behaviour that meets the standard of cause set out in section 56 of the Act. 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, in this case the landlord, has not met the onus to prove their version of events.

The landlord did not bring any witness to the hearing to corroborate her version of events. The landlord could have brought her neighbour, who was apparently present on April 21, 2015. The neighbour could have provided his version of events and have been cross-examined.

I considered the landlord's testimony against the written submission supplied and found several inconsistencies that caused me concern. During the hearing the landlord said the tent ran at her with two posts; the written statement declares it was two three posts. During the hearing the landlord said her daughter was a witness, in the written statement the landlord says only her son was a witness. Testimony should align with the evidence supplied and it did not.

Therefore, I find that the landlord has failed to meet the burden of proof, on the balance of probabilities. The tenant provided an equally probable explanation of the events that occurred and in the absence of any corroborating evidence by the landlord I find that the tenant's version of events is just as likely.

Therefore, I find that the application is dismissed. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The application is dismissed.

This decision is final and binding and 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: May 15, 2015

Residential Tenancy Branch

