



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 convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for an early end of tenancy and an order of possession – Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an early end of tenancy and an order of possession?

Background and Evidence

The tenancy started on October 20, 2013. Rent of \$900.00 is payable monthly. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit.

The Landlord states that the Tenant has been smoking marihuana daily in the unit since the onset of the tenancy and that it is causing health problems for her children. The Landlord states that there are other ongoing disturbances as well that were not considered in the previous hearing. It is noted that the Landlord previously made an application to end the tenancy early and in a Decision dated May 14, 2015 this application was dismissed. The Landlord states that the Tenant has been blocking access by the Landlord's vehicles and that since this previous hearing and the date of the Landlord's application the Tenant pulled on the chain link fence causing it to be loose, removed a wooden gate that kept dogs away from the garbage and on May 20, 2015 almost caused a fire by leaving a kettle on. The Landlord states that the Tenant is drunk daily and throws things around. The Landlord states that a one month notice to end tenancy for cause has not been served as the Residential Tenancy Branch (the "RTB") told her that she could pursue an early end of tenancy instead.

The Tenant states that the Landlord has put the Tenant "through the ringer for the past couple of months". The Tenant states that there is nothing wrong with the fence and that the Tenant was working out of town

on May 20, 2015. The Tenant states that the Landlord is retaliating against the Tenant for having requested repairs to the unit that he requested in a letter given to the Landlord two weeks prior to June 10, 2015. The Tenant states that the Landlord made its present application on the same date that the Tenant gave as a deadline for the requested repairs. The Tenant states that instead of making the repairs the Landlord went on a tropical vacation.

Analysis

Section 56 of the Act provides that a landlord may make an application to end a tenancy earlier than it would end if the landlord issued a 1 month notice to end tenancy for cause and obtain an Order of Possession in certain circumstances. It is not necessary for the landlord to issue a 1 Month Notice; however, the landlord must show that:

- (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.

Although the Landlord has provided evidence of disturbances, those disturbances that occurred over a long period of time cannot be considered urgent. Further, disturbances that occurred prior to the previous hearing were considered as set out in the Decision dated May 14, 2015 and may not therefore be revived or considered further.

In reviewing the Decision dated May 14, 2015 to determine what evidence of disturbance was already heard at the previous hearing, I note the Landlord gave evidence of recent smoking in the unit while at

this hearing the Landlord stated that the Tenant has been smoking since the beginning of the tenancy. This contradiction does not support the credibility of the Landlord's evidence. I also consider that while the evidence of disturbances that occurred between the last hearing and today's hearing may or may not be "significant" or "unreasonable" disturbances, there is nothing so compelling or urgent about the disturbances that the Landlord could not have waited for a one month notice to end tenancy for cause to take effect. Finally, I do not consider the Landlord's evidence that advice from the RTB prompted or caused her to make this application to hold a ring of truth or otherwise be credible. For these reasons I deny the request for an early end of tenancy and dismiss the Landlord's application.

In noting that the Landlord has now made two applications for an early end of tenancy that have found to be without merit, I caution the Landlord from making another such application. The Tenant is at liberty to make an application for dispute resolution in relation to any breaches of the tenancy agreement, Act or Regulations by the Landlord.

Conclusion

The application is dismissed.

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: July 10, 2015

Residential Tenancy Branch

