



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *ET, OPC, MND, 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. The landlord also applied for an order of possession pursuant to a notice to end tenancy for cause and for a monetary order for the filing fee and for damages.

The landlord testified that she served the tenant with the notice of hearing and application for dispute resolution on July 25, 2015, by registered mail and filed a tracking slip. The tenant did not participate in the conference call hearing. I found that the tenant had been served with notice of the landlord's claim and the hearing proceeded in the tenant's absence.

Issues to be Decided

Is the landlord entitled to end the tenancy early and to a monetary order?

Background and Evidence

The tenancy started on November 01, 1997. On July 22, 2015 the landlord served the tenant with a notice to end tenancy for cause, in person, with an effective date of August 31, 2015. The tenant disputed this notice in a timely manner by making application on July 23, 2015. This matter is scheduled to be heard on September 10, 2015.

The landlord stated that she has plans to be out of the country from September 06 to September 30, 2015 and would not be available to call into the hearing scheduled for September 10, 2015. The landlord stated that in order to have the hearing at an earlier date she made application for an order to put an early end to tenancy.

The landlord also spoke about the reasons for the notice to end tenancy for cause and stated that she had received complaints from the other occupants regarding items thrown out by the tenant into the balcony below.

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 evidence and testimony of the landlord, I am not persuaded that it would be unreasonable or unfair for the landlord to wait for the hearing that is scheduled for September 10, 2015. The tenant has made application to dispute the notice in a timely manner and is entitled to have an opportunity to be heard. While the landlord may not be in a position to attend that hearing she has other remedies that she can avail herself of. Based on the testimony of the landlord I find that the landlord has not established grounds for an extraordinary remedy such as s.56. For the above reasons, I dismiss the landlord’s application to end tenancy early.

The landlord did not provide the quantum of her monetary claim in her application for dispute resolution. The tenant must be informed of the landlord’s claim in order to prepare herself for the hearing. Since the landlord did not provide the tenant with information of the nature and amount of her monetary claim, this portion of the landlord’s application is also dismissed. The landlord has not proven her case and must bear the cost of filing her application.

Conclusion

The landlord’s application is dismissed in its entirety.

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: August 26, 2015

Residential Tenancy Branch