



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlord; her agent and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early and without notice, pursuant to Section 56 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on July 1, 2013 as a month to month tenancy for the current monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$250.00 paid. The parties agree that no written tenancy agreement was completed.

The landlord submits a child living in the landlord's part of the residential property has serious medical problems and should not be exposed to cigarette smoke. The landlord submits that the tenants smoke inside the rental unit despite being made aware of the landlord's desire to not have them smoke inside the rental unit.

The tenants submit that they have only smoked outside of the rental unit and suggest that perhaps smoke is getting into the house through open windows. The tenants testified that they no longer smoke and have provided copies of receipts for quit smoking patches.

The landlord also submits that on or about June 20, 2015 the female tenant was playing music loudly and that when she was told to turn down the music the tenant threatened the landlord that she would not pay rent; she would not move out; and she would break into the landlord's house and steal their possessions.

In addition, the landlords submit the tenant broke a panel on the gate to the backyard. The landlords further submit that as result of this behaviour the landlords and their family do not feel safe using the yard in fear that the female tenant may be out there. The landlord's agent did clarify that they are not fearful for their safety but rather for their possessions.

The female tenant submits that it was the male landlord who followed her out of the back yard that broke the gate and not her. She also testified that she never threatened anyone. The male tenant testified that the male landlord told him it was the female tenant who broke the fence so he went out and got a new piece of cedar and repaired the gate. It was not until later that he found out that the female tenant did not cause the damage.

The parties agreed the landlord did issue a verbal notice to end the tenancy but that the tenants advised the landlord that the notice had to be written notice. The landlord testified that a written 1 Month Notice to End Tenancy for Cause was issued on July 3, 2015 with an effective date of July 31, 2015.

Both parties also testified that landlords intend to have their parents move into the rental unit when the tenant moves out of the rental unit. The landlords have not issued a 2 Month Notice to End Tenancy for Landlord's Use of Property.

Neither party provided any testimony regarding any further incidents occurring between the parties since the 1 Month Notice was issued.

Analysis

Section 56(1) of the *Act* states a landlord may submit an Application for Dispute Resolution to seek an order 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 (1 Month Notice to End Tenancy for Cause).

Section 56(2) states the director may grant an order of possession based on such an application if:

- a) The tenant or a person permitted on the residential property by the tenant has:
 - 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 rental unit or residential property; and
- vi. It would be unreasonable, or unfair to the landlord or other occupants, to wait for a notice to end the tenancy under Section 47 to take effect.

Based on the landlord's submissions I find the landlord is attempting to end this tenancy early and without notice for two reasons: smoking in the rental unit and/or in a manner that impacts the landlord's son's health and because of the threat to steal possessions from the landlord.

As there is no written tenancy agreement that contains any clauses restricting the tenants' right to smoke in the rental unit or on the residential property I find, despite the health problems of the landlord's son, that the landlord cannot use this as a cause to end the tenancy.

I find there was no evidence presented that would indicate the landlord or any family member is in any danger of physical violence. I also find that while the parties may have had an altercation that could contribute to the landlord having cause to end the tenancy, I find that there is insufficient evidence to establish that this cause was so significant that it would be unreasonable to the landlord to wait for a notice to end the tenancy under Section 47 to take effect.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety. I note that this decision does not prevent the landlord from seeking an order of possession based on the 1 Month Notice to End Tenancy for Cause previously issued by the landlord.

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 10, 2015

Residential Tenancy Branch

