



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Optimum Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ET / OP

Introduction

This hearing was scheduled in response to the landlord's application for an early end of tenancy and an order of possession. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from July 01, 2015 to June 30, 2016. Monthly rent of \$1,050.00 is due and payable in advance on the first day of each month, and a security deposit of \$525.00 was collected.

Arising from email messages to the landlord from other residents in the building (2 of which have been submitted in evidence), by letter dated August 13, 2015, the landlord informed the tenant, in part, as follows:

As per our verbal agreement earlier, the backyard space is rented to you only for the storage of ladders and some garden tools. You are not permitted to park your RV there. According to my site visit today, the wood fencing has been totally demolished and it causes security issues for the building.

Further, in the letter the landlord instructed the tenant to "remove your RV and repair the backyard's fencing on or before August 19, 2015, [or] we will give you one month notice to terminate your tenancy agreement with our company." Thereafter, for a number of reasons identified by the tenant during the hearing, the tenant has presently still not remedied the landlord's concerns. While the landlord filed an application for dispute

resolution on August 21, 2015, a 1 month notice to end tenancy for cause has not been issued.

During the hearing the landlord testified that there have also been occasions when he has heard a dog barking in the tenant's unit. In this regard, the landlord drew attention to the addendum to the tenancy agreement which provides, in part, as follows:

4. WATERBEDS and PETS of ANY SPECIES are not allowed in the premises.

There is no evidence that the tenant has been issued with any written warning(s) concerning a dog in the unit and the tenant denies owning a dog.

Additionally, in the landlord's application the landlord alleges that the tenant has "sublet unit to other people without owner permission." Once again, there is no documentary evidence that the tenant has been issued with any written warning(s) concerning the landlord's claim.

Finally, during the hearing the landlord claims to have received complaints from other residents related to late night / early morning party noise and smoking of marijuana at the subject unit, however, there is no documentary evidence of complaints from other residents in this regard, or evidence that the landlord has issued any related written warning(s) to the tenant.

Analysis

Section 56 of the Act addresses **Application for order ending tenancy early**, and provides as follows:

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 the tenant a notice to end the tenancy.

Based on the documentary evidence and testimony of the parties, I find that the landlord has failed to meet the burden of proving the existence of any of the conditions set out in section 56(2)(a) of the above legislation, in concert with proving that "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.” Accordingly, the landlord’s application for an early end of tenancy and an order of possession must be dismissed. Going forward, in the event that the parties are unable to resolve directly between them the various matters in dispute, the landlord has the option of issuing a 1 month notice to end tenancy for cause. In this regard, the attention of the parties is drawn to section 47 of the Act which addresses **Landlord’s notice: cause**.

Conclusion

The landlord’s application for an early end of tenancy and an order of possession is hereby 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: September 21, 2015

Residential Tenancy Branch

