



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cressey WB-2 Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with an application by the landlord seeking an early end of tenancy and an order of possession. The landlord is also seeking the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Is the landlord entitled to have the tenancy end early?

Is the landlord entitled to an order of possession?

Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about October 1, 2015. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$550.00. The landlord stated that the tenant has become erratic in his behaviour and feels that he is a threat to the safety of others in the building and the building itself. The landlord stated that on October 26, 2015 the tenant had a violent fit that resulted in him screaming, yelling, swearing and smashing a window. The landlord stated that police attended and took the tenant away.

The landlord stated that on November 20, 2015 the police attended again to investigate unusual behaviour. The landlord stated that the tenant was cooking food on his stove and that it burned resulting in a fire while the tenant was sleeping on his sofa. The

landlord stated that she has received letters from other tenants that state that if the tenant isn't evicted, they will move out. The landlord stated that the tenant is also very abusive towards staff that manages the building and is becoming more and more of a problem. The landlord stated that she feels that these examples justify an early end of tenancy and asks for an order of possession.

The tenant gave the following testimony. The tenant stated that he would gladly move out on December 31, 2015 but the landlord will not agree. The tenant stated that he is not happy living in the building any further. The tenant stated that he adamantly disputes the landlords' allegations. The tenant stated he was not arrested by the police on October 26, 2015. The tenant stated that he had a reduction in his medication that resulted in him being hospitalized for three days due to mental health issues. The tenant stated that he slipped on a loose floor board and tripped, causing a chair to smash up against the window. The tenant stated that he denies any allegation that he was having a psychotic episode. The tenant stated that the landlord has not yet fixed the window in his suite and has not provided any proof that they have. The tenant stated that the landlords' property is not in danger but is being poorly maintained.

The tenant disputes the version of events as alleged by the landlord in regards to November 20, 2015 as well. The tenant stated that the fire department attended that day and not the police. The tenant stated that he did in fact burn some food in the oven and that the suite filled up with smoke because the range hood isn't working. The tenant stated that he was awake and that he did not cause any damage to the building. The tenant stated that he is upset with the staff as he has made several requests to make repairs in his suite for almost a month but nothing was done about it. The tenant stated that he is not a risk to anyone, himself or the building and would still be open to moving out with some cooperation from the landlord.

Analysis

When a landlord makes an application for an early end to tenancy, the landlord has the burden of proving that:

1. There is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord and placing the landlord's property at significant risk; **and**
2. That it would be unreasonable or unfair to the landlord or other occupants to wait for a one month Notice to End Tenancy for cause under section 47 of the Act to take effect.

It is apparent from the testimony of the parties that there are issues between them. The tenant has provided disputing testimony to the landlords' allegations. Section 56 of the Act uses language which is strongly written and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk and that it's **unfair** to the landlord or other occupants to wait for a Notice to End Tenancy. I do accept that the tenant has been a nuisance on two occasions, but the two incidents alleged by the landlord are not enough to justify the early end of tenancy.

In this case, I am not satisfied that the landlord has met the second part of the test by showing that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. Although there may be cause to end this tenancy pursuant to Section 47 of the Act; I do not find it is unfair or unreasonable for the landlord to wait for a one month Notice to End Tenancy to take effect.

Conclusion

The landlords' application is dismissed. The tenancy continues.

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: December 10, 2015

Residential Tenancy Branch

