



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hermita Villa Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act.

The landlord and his agents attended the telephone conference call hearing; the tenant did not appear.

The landlord testified that they served the tenant with their application for dispute resolution and notice of hearing by leaving the documents with the tenant on November 17, 2015.

Based upon the submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord and his agents were provided the opportunity to present their evidence orally, to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Should the tenancy end early and an Order of Possession be granted to the landlord?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on April 1, 2014, for a monthly rent of \$780.00.

In support of their application, the landlord claims that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

In explanation, the landlord submitted that from the beginning of the tenancy, the landlord has had significant issues with the tenant, including his threats and intimidation towards the landlord's agent, the managers in the residential property. One event which caused the start of the intimidation towards the landlord's agent was after the tenant accused landlord's agent "CS" of theft. Another event causing the intimidation and aggression was after the tenant had allegedly exposed himself on his balcony, which led to a warning to the tenant. This alleged event occurred on or about June 14, 2014.

In response to my question, the landlord confirmed that they have issued the tenant a 1 Month Notice to End Tenancy for Cause (the "Notice"), which was dated and delivered by personal service to the tenant on October 31, 2015, listing an effective move-out date of November 30, 2015.

The landlord confirmed further that the reason he has not sought enforcement of the Notice, which is undisputed by the tenant, was due to a representative of the Residential Tenancy Branch ("RTB") telling him that he could have the tenant evicted earlier with this claim, rather than with an application based upon enforcement of the Notice.

The landlord's additional relevant documentary evidence included, but was not limited to, written statements from the landlord's agents and a copy of the Notice.

Analysis

Section 56 of the *Act* is an extraordinary remedy which grants the Director authority to end a tenancy without a notice of end tenancy if sufficient cause is established and the landlord demonstrates that it would be both unfair and unreasonable to allow the tenancy to continue until a one month Notice to End Tenancy under section 47 would take effect.

I deny the landlord's application as I find that the landlord has not met the test required under section 56 of the *Act* to end this tenancy early.

I find that all the stated reasons for an early end to the tenancy brought forward by the landlord were addressed by the landlord's issuance of the Notice under section 47 of the *Act*, served on the tenant on October 31, 2015. The landlord's remedy would then be to file an application for Dispute Resolution based on this Notice.

In reaching this conclusion, I was also influenced by the landlord's confirmation that he believed or was told that he would be scheduled an earlier hearing on an application for an early end to the tenancy, rather than had he filed seeking enforcement of the Notice.

I also considered and was influenced by the evidence showing that the alleged disturbing activities have been ongoing for several months, which I find shows the lack of an urgent nature of the activity as claimed by the landlord.

Due to the above, I find the landlord has not provided any compelling evidence or reasons to demonstrate that it would be unreasonable or unfair to the landlord to wait for a notice or hearing for Dispute Resolution under section 47 to take effect. As a result, I dismiss the landlord's application, without leave to reapply.

Conclusion

I have dismissed the landlord's application without leave to re-apply as I have determined that the landlord has not demonstrated that it would be unfair or unreasonable for the landlord to wait for a notice to end tenancy to take effect under sections 47 of the *Act*.

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 18, 2015

Residential Tenancy Branch

