



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wynford Group
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 to 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

It is understood that the unit which is the subject of this dispute is 1 of what are 4 units located in a side-by-side 2 storey duplex. The subject unit is located in the lower portion of one half of the duplex, while other renters occupy the unit located above the subject unit. As to the other half of the duplex, the upstairs unit is vacant and the lower unit is occupied.

There is no written tenancy agreement in evidence before me for this tenancy which began in June or July 2015. Monthly rent is \$400.00. The tenant claims that a security deposit of \$200.00, and a pet damage deposit of \$50.00 were collected.

The relationship between the tenant and the renters located immediately above her has been strained, and the upstairs renters have reported not having electric heat, lights or power on 3 particular occasions in December 2015. The breaker / fuse panel is located in the tenant's unit, and the landlord has concluded that the tenant has intentionally cut power to the upstairs unit on these occasions. In allegedly doing so, the landlord considers that the tenant is "significantly interfering and unreasonably disturbing the upper tenants."

In support of their view of the tenant's role in this matter, the landlord has submitted documentation from an electrician. The electrician documents that he found certain breakers in the "off" position upon attending the unit on the 3 aforementioned occasions, and that the breakers were physically turned off as opposed to being simply tripped.

However, the tenant claims that she has not tampered with the breaker / fuse panel, and that the upstairs renters have suffered power loss as a result of overloading the circuits with their appliances. Further, the tenant claims that she herself has had issues with power in her own unit.

The landlord's application for dispute resolution was filed on January 04, 2016, and there is no apparent evidence of reported difficulties with the power supply to the upstairs renters thus far in 2016.

Analysis

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

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;

(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.

Even if the landlord had correctly concluded that the tenant intentionally cut power to the upstairs renters on the 3 occasions at issue, in the circumstances I find that the landlord has failed to meet the burden of 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 tenancy under section 47 [*landlord's notice: cause*] to take effect.” The landlord has the option of issuing such a 1 month notice. Accordingly, the landlord’s present application is hereby dismissed, and the tenancy remains in full force and effect.

Conclusion

The landlord’s application for an early end to tenancy / and an order of possession is hereby dismissed, and the tenancy presently continues uninterrupted.

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: January 26, 2016

Residential Tenancy Branch

