



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution, seeking an order to end the tenancy early, receive an order of possession, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") attended the hearing and gave affirmed testimony and was provided the opportunity to present the landlord's evidence orally and in written and documentary form, and to make submissions to me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were personally served on both tenants on November 30, 2015 at approximately 3:00 p.m. at the rental unit and that both tenants accepted the packages. The agent called her son, L.R. as a witness. Witness L.R. stated under oath that he was present at the end of November 2015 when his mom served both tenants with papers and that the tenants both took the papers before closing their rental unit door. Based on the undisputed testimony of the agent, the witness testimony, and without any other evidence to prove to the contrary, I accept the agent's testimony that the tenants were both served on November 30, 2015 personally by the agent for the landlord.

Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession?

Background and Evidence

An agent for the landlord has applied for an order of possession to end the tenancy early based on the tenants being “crack cocaine dealers” and that the tenants “strip bikes” which the agent described as dismantling bikes.

The agent referred to a list of police file numbers submitted in evidence and confirmed that she did not have any police officers as witnesses to support what the police files relate to. The agent stated that she did not have any other witnesses besides her son to present at the hearing. When asked what her son would testify to, the agent stated it was regarding an incident that occurred in the summer of 2015.

The agent stated that someone attending the tenants’ rental unit had told the agent “I’m going to fuck you up good” but was unable to provide the date or other details regarding the person who allegedly made the above-noted comment to the agent. The agent did not provide any description of the person who made the above-noted comment or further details regarding this incident.

Analysis

Based on the documentary evidence and the testimony from the agent during the hearing and on a balance of probabilities, I find the following.

Section 56 of the *Act* indicates:

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.

[my emphasis added]

The burden of proof is on the landlord to prove 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 to take effect.

In the matter before me, the agent made an allegation that the tenants are “crack cocaine dealers” and that they “strip bikes” but failed to provide supporting evidence such as police statements or a police witness during the hearing. Furthermore, the agent confirmed that her son as the only witness was going to testify regarding a matter that occurred in the summer of 2015.

In addition to the above, I do not afford any weight to the agent's testimony that someone told her "I'm going to fuck you up good" due to vague details regarding the incident. The agent failed to indicate that she contacted the police to report the incident, failed to indicate the date and time of the event, or a description of the person who she claims made the comment.

I find that the agent has provided insufficient evidence to support the allegations described above. At the very least, I would expect the landlord to have arranged for either a police officer to provide testimony or for the police to have provided a written statement which could have been submitted in evidence. Furthermore, a matter that occurred in the summer of 2015 when the application for an early end to the tenancy was filed on November 26, 2015 does not meet the threshold as indicated in section 56(2)(b) of the *Act* which states:

(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.

Therefore, I find that the landlord has failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the *Act*. **I dismiss** the landlord's application in full due to insufficient evidence. **I order** the tenancy to continue until ended in accordance with the *Act*.

As the landlord did not succeed with their application, I do not grant the landlord the recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: January 11, 2016

Residential Tenancy Branch

