



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made on December 15, 2015 to end the tenancy early and obtain an Order of Possession.

The Landlord, the Landlord's advocate, and the Tenant appeared for the hearing. During the hearing, the Landlord and the Tenant provided affirmed testimony. The Landlord also called a witness during the hearing but she only provided evidence in relation to the service of a notice to end tenancy for unpaid rent which was not the subject of this hearing. Only the Landlord provided documentary and photographic evidence prior to this hearing.

The Landlord testified that a copy of her Application, the Notice of Hearing documents, and a copy of her evidence were served to the Tenant by posting the documents to the Tenant's rental unit door on December 15, 2015. The Tenant confirmed receipt of the documents but explained that he had received these at the start of January 2016.

Section 90(c) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received three days after it is posted to the door. The Tenant confirmed that he had received the documents. Therefore, I find the Landlord completed service pursuant to Section 89(2) (d) of the Act. I also find the documents were received in sufficient time by the Tenant for him to adequately respond to the Application.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party and the witness on the evidence provided. I have carefully considered the evidence provided by the parties in this case. However, I have only documented that evidence which I relied upon to make findings in this decision.

Issue(s) to be Decided

Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The parties agreed that this tenancy started on November 1, 2015. A written tenancy agreement was completed for a month to month tenancy. Rent is payable in the amount of \$1,000.00 on the first day of each month. The Tenant paid \$500.00 as a security deposit which the Landlord still retains. Both parties also confirmed that the Tenant has not paid rent for December 2015 and January 2016.

The Landlord testified that within hours of this tenancy starting, the Tenant started to allow non-residents into the residential complex. These non-residents were found to be sleeping in the stairwells of the building and some of them caused significant graffiti to the interior walls. The Landlord provided a photograph showing graffiti on a stairwell door. When the Landlord made enquiries about this, the caretaker of the building saw that these non-residents were gaining entry by the Tenant.

The Landlord testified that these non-residents are using the building to sleep in, smoke their cigarettes and discard their cigarette butts, and to use it as a bathroom facility. The Landlord testified that on one occasion the Tenant was seen to be allowing a half-naked woman into the building.

The Landlord testified that she has received numerous verbal complaints from other owners of units in the same building explaining that they fear for their safety and the integrity of the building. The residents of the building are concerned that they have unknown people in the building and that some of these people are prostitutes.

The Landlord testified that other residents of the building have reported the Tenant causes late night disturbances in the form of banging, multiple entry and exits from his rental unit, and bringing in several girls into his rental unit throughout the late night.

The Landlord testified that they have monitored the camera footage in the building and provided snap shots of the Tenant's activity. This includes a photograph showing the Tenant being escorted out of the building by police. The Landlord explained that the other photographs show non-residents coming into the building included a half-naked woman. The Landlord also provided a police file number to support the fact that police were called in relation to the disturbances caused by the Tenant.

The Landlord testified that the Tenant is continuing to cause a disturbance in the building and is continuing to allow non-residents into it. The Landlord testified that she provided the Tenant with a breach letter dated December 15, 2015 which acted as an informal eviction notice for reasons of unpaid rent and the fact that there has been violent and disturbing behaviour by the Tenant. The Landlord provided this evidence for this hearing and it informs the Tenant that the Landlord is being blamed for putting other residents in life-threatening situations.

The Tenant disputed the Landlord's testimony. The Tenant acknowledged that the people entering into his rental unit were his friends who were coming to visit him, including the woman who the Landlord claimed was half naked. The Tenant testified that he was arrested and taken away by the police because there was a warrant out for his arrest for failure to show up at court, not because he was creating a disturbance in the building. The Tenant denied that he was allowing prostitutes into the building.

The Tenant stated that even though there was video footage provided by the Landlord of graffiti to the walls, he did not know that his guests had caused this damage. The Tenant submitted that he had not seen this damage because when he returned it had been cleaned off. The Tenant denied that he creates late night disturbances in his rental unit explaining that he rides as bike because he has a drink drive ban and sometimes this may hit the walls when he comes in and out of the rental unit. The Tenant did acknowledge receiving the Landlord's informal eviction letter dated December 15, 2015.

The Landlord's witness only provided testimony in relation to the service of a notice to end tenancy for unpaid rent. However, the witness confirmed that she was friend of the Landlord and that the Landlord had been very troubled and disturbed by the Tenant's actions since this tenancy started.

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the Landlord when the circumstances of the tenancy are such that it is unreasonable or unfair to a Landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause.

I have carefully considered the evidence of both parties and I make my following findings based on the balance of probabilities. Section 56 (2) of the Act provides the circumstances in which a Landlord may apply to end the tenancy early.

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

[Reproduced as written]

The Act does not prohibit a tenant from having guests to the rental unit. However, a tenant is responsible for the conduct of any guests being invited into the residential property. Section 56(2) of the Act above specifically applies to the tenant **and/or** to a person permitted on the residential property by the tenant.

In this case, I am satisfied by the Landlord's evidence that the Tenant allowed non-residents into the building. The Tenant claimed that these people were his guests. Therefore, the Tenant was responsible for their actions and conduct thereafter. However, I find the Landlord satisfied me that on the balance of probabilities the

Tenant's guests caused the graffiti and the other disturbances the Landlord testified to above. The Tenant did not dispute the fact that these people had caused the graffiti but claimed that he was not aware that they did this. I find this is not sufficient for the Tenant to escape and void his responsibility towards his guests when he allowed them into the residential property.

I find the Landlord's photographic evidence to be more compelling than the Tenant's oral testimony and I find that the disturbance being caused by the Tenant's "guests" was so serious that police had to be called. I accept the Landlord's evidence that despite the Tenant being put on notice of the disturbances via the December 15, 2015 letter, the Tenant is still allowing a significant disturbance to be caused in the building.

Therefore, I find this tenancy should end early. As the Tenant is in rental arrears, the Landlord is issued with an Order of Possession which is effective **two days after service on the Tenant**. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession to end the tenancy early.

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 18, 2016

Residential Tenancy Branch

