



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the "Act") for an early end to this tenancy and an order of possession.

The tenant and the tenant's two advocates (collectively the "tenant") and the landlord's agent (the "landlord") along with representatives from the Acquired Brain Injury Program (collectively the "tenant's support team") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The tenant confirmed receipt of the landlord's application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order ending this tenancy early?

Background and Evidence

While I have turned my mind to all the documentary evidence, including witness statements, miscellaneous letters and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

As an affordable housing provider the landlord has a partnership with Fraser Health and the Acquired Brain Injury Program. The tenant suffers from a brain injury and was housed in the rental unit with the expectation she would live independently with supports.

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on April 1, 2016 on a month-to-month basis. Rent in the amount of \$320.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$177.50 at the start of the tenancy. The tenant continues to reside in the rental unit.

As a result of ongoing behavioural issues with the tenant, the landlord issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") dated July 11, 2016 with an effective date of August 31, 2016.

In response to the 1 Month Notice, the tenant filed an application for dispute resolution. A hearing scheduled for September 19, 2016 will address the matter of the 1 Month Notice. For ease of reference, the file number for this hearing is set out on the front page of this decision.

Landlord

It is the landlord's position that since the issuance of the 1 Month Notice the tenants behaviour has escalated and warrants an early end to tenancy. In particular the landlord described an incident that took place on July 18, 2016 in which the tenant engaged in some verbally abusive behaviour of a sexual nature towards other residents of the complex. Some of the residents present for this incident testified to the specifics of the language used.

The landlord and the accompanying members of the tenants support team testified to another incident that took place on July 28, 2016 in which the tenant engaged in verbal abuse of another resident. This incident resulted in police attendance and a file number. No charges were laid.

The landlord contended that the tenant's recent episodes of verbal abuse have caused anxiety and fear amongst the other residents. The witnesses provided varying accounts of their feelings in response to the tenant's behaviour. While some testified to feeling anxious; others testified to feeling irritated.

Tenant

The tenant acknowledged using foul language in both instances but testified that the instances were exaggerated by the landlord.

Analysis

Section 56 of the Act establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an order of possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an order of possession under section 56, I need to be satisfied that the tenants have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

Based on the testimony of both parties, the witnesses and my review of the written evidence, I find that the landlord has failed to prove that any of the described instances of verbal abuse warrant an early end to tenancy. Specifically, I find that the landlord has failed to prove that the effects of the tenant's verbal abuse are so extreme as to warrant an early end to tenancy.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlord's application for an early end to this tenancy.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: August 25, 2016

Residential Tenancy Branch