



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VICTORIA ROYAL VACATIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with an application by the landlord seeking an early end of tenancy, an order of possession, and an order to recover the filing fee for this application. The landlord participated in the conference call hearing but the tenant(s) did not. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing by having a witness present when personally serving them on August 12, 2016. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence. The landlord gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to end the tenancy early?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for the recovery of the filing fee?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about May 1, 2016. Rent in the amount of \$1701.25 which includes a monthly cleaning charge as it's a furnished suite is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$785.00. The landlord stated that the tenants have smoked in the unit and have made noise that disturbs other tenants. The landlord stated that the tenants were cautioned about their behaviour in writing in May 2016 and again in June 2016. The landlord stated that the male tenant physically assaulted the female tenant requiring the police to attend and arrest the male tenant. The landlord stated that this incident occurred on August 1, 2016 which led them to make this application.

The landlord stated that other tenants have verbally voiced their displeasure and their concern with these tenants. The landlord stated that the other tenants have been disturbed by the subject tenants and that the tenancy must end. The landlord stated that the tenants paid the September rent.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of landlord's claim and my findings are set out below.

When a landlord makes an application for an early end to tenancy, the landlord has the burden of proving that:

1. there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord and placing the landlord's property at significant risk; and
2. that it would be unreasonable or unfair to the landlord or other occupants to wait for a one month Notice to End Tenancy for cause under section 47 of the Act to take effect.

In this case, I am not satisfied that the landlord has met the second part of the test by showing that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. The landlord stated that there were witnesses to the alleged events however none of the witnesses called into this hearing or provided a written statement. Another issue of concern is that the landlord accepted the September rent without explaining to the tenants if it was for use and occupancy only, whether the landlord would reinstate the tenancy or whether the hearing was to still go ahead. The landlord stated "I accepted the rent as usual", but said nothing to advise the tenants as to what the landlords' intentions were. I am satisfied that there *may* be cause to end this tenancy pursuant to Section 47 of the Act; however, I do not find it is unfair or unreasonable for the landlord to wait for a one month Notice to End Tenancy to take effect.

Based on the above the landlord has not provided sufficient evidence to be successful in this application.

Conclusion

The landlords' application is dismissed.

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: September 06, 2016

Residential Tenancy Branch