



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An early end to the tenancy and an order of possession - Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

It is noted that at the onset of the hearing the Landlord stated that he was recovering from surgery and was tired however the Landlord declined the opportunity to seek an adjournment.

Issue(s) to be Decided

Is the Landlord entitled to an early end of tenancy?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on October 1, 2010. Rent of \$559.00 is payable on the first day of each month.

The Landlord states that on August 23, 2016 the Tenant was arrested by police after removing the fire extinguisher from the building and taking it out onto the street and threatening people. The Landlord refers to the letter from the police submitted as

evidence. This letter indicates that the Tenant was seen spraying a fire extinguisher on the ground and attempting to spray people and that the police apprehended the Tenant under the Mental Health Act. The Landlord states that on this same day the Tenant had pulled fire alarms in the building, tore a fire bell out of a wall, punched cleaning tools out a second floor window and broke the glass door of an empty unit. The Landlord states that other tenants informed the Landlord that the tenant was “on a tear”. The Landlord states that this was a one-time incident of threatening people. The Landlord states that the Tenant plays his drums on and off during the day and played them on the day of the incident as well.

The Landlord states that 3 other tenants living on the same floor as the Tenant have told the Landlord they are afraid of the Tenant due to his bullying. The Landlord was unable to state what behavior of the Tenant was frightening or bullying. The Landlord states that these tenants were reluctant to provide any evidence for this application. The Landlord states that some tenants say they will leave if the Tenant remains and that some are looking for another place.

The Landlord states that the building currently has 7 units out of 16 that are occupied and as the occupied units become vacant they are not further rented out. The Landlord states that the Tenant caused damages to the building at about a cost of \$150.00 for supplies and about another \$200.00 for labour. The Landlord states that the damages have not been repaired.

The Landlord states that he made the application seeking an early end to the tenancy on the advice of the Residential Tenancy Branch (the “RTB”) and that for this reason the Landlord did not serve the Tenant with a one month notice to end tenancy for cause. The Landlord states that the Tenant returned to the unit a few days after being removed by police and that since then things have been “not too bad”.

The Tenant states that on the day of the incident he was not in a good mood because the Landlord would not answer the Tenant’s questions about fire safety in the building.

The Tenant states that he believes that the building is no longer under a fire department code as there is a sticker on the front door from the fire department. The Tenant states that he took the extinguisher out onto the street to see if it actually worked and was then taken to a hospital by the police. The Tenant states that the reason he was removed was because the Landlord told the police that the Tenant had threatened the Landlord's life. The Tenant denies any such threat and states that no charges have been laid as a result of the incident. The Tenant denies that anything other than the fire extinguisher was damaged. The Tenant state that there are no other damages and does not know what the Landlord is talking about.

The Landlord states that the Tenant makes threats against the Landlord everyday by "mumbling and giving me the finger". The Landlord states "to me this is a threat".

It is noted that the Landlord did not provide any oral evidence or refer to any submissions in relation to other disturbances and when given opportunity stated that he was tired and that if he lost this case it would be the fault of the RTB.

Analysis

Section 56(2)(b) of the Act provides that in order to establish a claim for an early end to tenancy the landlord must establish that it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a one month notice to end the tenancy for cause to take effect.

The Landlord was clear that the application was being made due to a one time incident with the fire extinguisher and that since this incident there have been no problems. The Landlord provided no supporting evidence that other tenants were previously afraid of the Tenant such as a tenant complaint log or journal. While the Landlord asserts that other tenants are looking to move out of the unit, there is no evidence to support that these tenants are looking to move as a result of the incident and there is nothing to indicate an escalation of any behavior that might prompt tenants to be seeking other accommodation. Given the Landlord's evidence of what constitutes threats to the

Landlord I consider that the Landlord overall tends to exaggerate and that this tendency must be considered in relation to the urgency of the matter. The Landlord's evidence that no repairs have been made indicates that the damaged fire extinguisher has also not been repaired or replaced. This evidence tends to support the Tenant's evidence that there are problems with fire safety at the building which raises questions about the Landlord's motive in having the Tenant quickly removed.

For the above reasons and without determining whether the incident with the fire extinguisher would be grounds to end the tenancy for cause, I find on a balance of probabilities that the Landlord has not substantiated that it would be unreasonable or unfair to wait for a one month notice to take effect and I therefore dismiss the Landlord's claim for an early end to the tenancy. Given this dismissal the Landlord is not entitled to an order of possession and I dismiss this claim as well. In effect the Landlord's application is dismissed in its entirety. The tenancy continues however I would strongly caution the Tenant to not take matters into his own hands if the Tenant believes that deficiencies exist with fire safety and to report any such problems to the appropriate authorities instead.

Conclusion

The Landlord's 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: October 14, 2016

Residential Tenancy Branch