



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 (the "Application") under the *Residential Tenancy Act* (the "Act"), seeking an order to end the tenancy early by receiving an order of possession, and to recover the cost of the filing fee.

The landlord, counsel for the landlord, an interpreter for the landlord, a witness for the landlord, the tenants, and a tenant advocate attended the hearing and gave affirmed testimony and were provided the opportunity to present the landlord's evidence orally and in written and documentary form, and to make submissions to me.

Regarding the service of documentary evidence, the landlord's counsel referred to a package of police reports that was not before the arbitrator as it had been served late and as a result, that package was not considered as it was not served on the Residential Tenancy Branch in time for this proceeding. The parties confirmed having received and reviewed the other evidence packages.

Preliminary and Procedural Matter

At the outset of the hearing, the parties agreed to amend the landlord's Application to correct the first and last name of the male tenant which was transposed in error. Pursuant to section 64(3) of the *Act* the Application was amended by consent of the parties.

Issue 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 an oral tenancy began in January 2011. Monthly rent in the amount of \$900.00 plus \$35.00 for cable was due on the first day of each month and was increased to the current monthly rent of \$975.00 including cable and due on the first day of each month. A security deposit of \$450.00 was paid by the tenants at the start of the tenancy.

The landlord has applied for an order of possession to end the tenancy early based on the tenants threatening the landlord and turning off the hot water tank and furnace in the rental unit, all of which the tenants deny. Counsel for the landlord stated that the police reports were requested and obtained but as noted above, they were not submitted in time to be considered for this Application. As a result, counsel was reminded not to refer me to documents I didn't have before me during the hearing.

Counsel stated that on June 4, 2016 the landlord was threatened and that the police were contacted. No details regarding the type of threats were presented during the hearing for my consideration. Counsel stated on October 25, 2016 another 2 Month Notice to End Tenancy for Landlord's Use of Property was served on the tenants and that the relationship deteriorated after that. Counsel confirmed that two previous 2 Month Notices had been cancelled prior to this hearing.

Counsel stated that the landlords live upstairs in the home and that the tenants live downstairs in the basement and that the furnace and hot water tank are both in the tenants' area of the home. Counsel stated that the landlord was alleging that the tenants either shut off the hot water tank or used up all the hot water around October 27, 2016 as the landlord served a 24 hour notice of entry on the tenants and entered the rental unit on October 30, 2016 with a plumber, R.M. Counsel indicated that the tenants were not cooperative so the landlord contacted the police who attended the rental unit while the plumber inspected the hot water tank and found nothing wrong with it other than "high pressure".

The plumber R.M. (the "plumber") was called as a witness and testified that there was a lock on the furnace room that he noticed was missing as he was the person who did the initial installation and that he suspected tampering by the tenants. The plumber stated that while the hot water tank was "firing up" all he could determine was that there was "high pressure" but did not explain what high pressure meant during the hearing. The tenants claim that the witness was lying and that there had been no tampering by the tenants.

Due to the suspected tampering of the furnace room the landlord issued another 24 hour notice of entry on the tenants dated October 31, 2016. Counsel stated that due to the landlord's concern about the tenants "continuously loud banging and their behaviour" the landlord then issued another 24 hour notice of entry on the tenants on November 1, 2016 for entry on November 2, 2016.

The landlord stated that he was not permitted entry which the tenants disputed. The landlord alleged that there was no heat coming from the furnace but later confirmed that the furnace issue seems to have been rectified.

The landlord referred to an email dated September 23, 2016 from the tenants to the landlord's employer complaining about the landlord which the tenants did not dispute writing.

The landlord did not submit any reports from the plumber in evidence and the tenants have denied that they have tampered with the hot water tank, furnace or have created the noise or behaviour concerns alleged by the landlord. The tenants further stated that they too live in the rental unit so if they wanted to tamper with the heat and hot water, why would they do that if they live in the rental unit and why would they have not done that sooner if they were the type of people that the landlord is making them out to be.

Counsel for the landlord confirmed that the landlord has not issued a 1 Month Notice for Cause against the tenants and that their next hearing set for later in December 2016 is related to the 2 Month Notice served on the tenants dated October 25, 2016. Counsel had requested in the "Details of Dispute" section of the Application that if the landlord was not successful that in the alternative the 2 Month Notice be considered which I am unable to consider due to Applications relating to ending the tenancy early and seeking an order of possession are standalone Applications that may not be combined with any other relief under the *Act* other than the request for the recovery of the cost of the filing fee.

Analysis

Based on the documentary evidence and the testimony from the parties 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, a 1 Month Notice to End Tenancy for Cause has not been issued by the landlord. Furthermore, I find that the landlord has failed to provide sufficient evidence to supports that the tenants have tampered with the hot water tank and furnace. Regarding the landlord's claim of threats and behaviour concerns, I find the details provided by counsel, the landlord and the witness to be too vague and that the landlord was clearly intending to rely on the details of the police reports which were not submitted in time for the hearing for consideration.

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 **without leave to reapply**.

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

Conclusion

The landlord's Application fails.

The tenancy shall continue until ended in accordance with the *Act*.

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: December 6, 2016

Residential Tenancy Branch