



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 in response to an application by the landlord for dispute resolution pursuant to Section 56 of the *Residential Tenancy Act* (the Act) seeking an early end to a tenancy with an Order of Possession, and recover the filing fee.

The hearing was conducted via teleconference and was attended by the landlord and the tenant. The landlord had benefit of legal counsel and the tenant was represented by their agent. The tenant acknowledged receiving all the document evidence of the landlord and further acknowledged they had not advanced document evidence to this matter. The parties participated with their testimony and submissions during the hearing. The parties were also provided opportunity to resolve their dispute to no avail.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession without the requirement of one (1) months' Notice to End Tenancy - pursuant to 56 of the *Act*?

Background and Evidence

The evidence submitted by the landlord for seeking an early end to this tenancy is as follows.

- *The tenants have allowed three other family members to reside with them without notice or consent of the landlord, in breach of the tenancy agreement*
- *The tenants are harboring or keeping a pet (to wit, a dog), without notice or consent of the landlord, and in breach of the tenancy agreement.*
- *The tenants refuse to turn on the heat*
- *The tenants refuse to pay for their portion of the utilities and lawn care*
- *The lawful tenants have already executed an agreement to vacate but have turned around and indicated that they would not be leaving*
- *The unlawful tenants have threatened to kill the landlord*

- *When the landlord posted a 24-hours' notice to do an inspection, one of the unlawful tenants threw the notice out, and threatened to break the landlord's phone. Police attended as a result; and*
- *When trying to do an inspection, the unlawful tenants refused access and pretended not to speak English - as written*

The landlord testified the tenants occupy the upper level of a house and control the heat to the entire house which also is occupied by a tenant in the lower rental unit. The landlord testified that during an inspection of the lower unit the heat was not emanating from the forced air heating system and the rental unit felt cold. The landlord testified they purchased 3 heaters for the lower unit tenant to augment heating. The respondent tenant testified they keep the heat at above what is comfortable for them and have very limited control over what heat is received by the basement suite below them.

The parties agree that on October 10, 2016 one of the tenants and the landlord signed a Mutual Agreement to End a Tenancy form with an effective end date of November 30, 2016, but to date have not vacated. The parties agreed the Mutual Agreement was drawn following a heated exchange between the parties. The tenant testified that at the time the tenant signing the agreement felt pressured by the acrimonious circumstances between the parties. The tenant testified that despite the stress of relocating multiple family members they worked toward the agreement and were successful in finding another suitable rental unit but were thwarted by the prospective landlord whom purportedly negated an agreement to rent to them days before they were to move, and for which they were already packed. The tenant testified they remain packed and ready to move as soon as possible.

The landlord testified that one of the occupants of the unit threatened to kill them. The tenant disputes the landlord's assertion claiming this did not occur. The landlord testified that police were not called to intervene, however another individual was with the landlord whom purportedly was witness to a threat. The landlord testified that on a subsequent occasion the same occupant threatened to break the landlord's phone at which time the police were called to intervene and spoke to the occupant who acknowledged uttering a threat. The tenant testified the occupant was upset over the landlord's practice of recording interactions between the parties which further stressed an already acrimonious relationship. The landlord's evidence is that a police file number was given by the attending police officer whom offered that the matter was not criminal in nature.

Analysis

On preponderance of the *relevant* evidence in this matter I find the following. I find that **Section 56** of the *Act* is two-fold, in that it allows a landlord to request an end to a tenancy and for an Order of Possession without providing a 1 Month Notice to End for Cause, if the landlord has cause to end the tenancy pursuant to Section 56(2)(a)(i) to (v) and that pursuant to Section 56(2)(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 pursuant to Section 47 to be effective.

Based on all the relevant evidence submitted, I find the landlord has established the tenant may have somehow caused the lower rental unit of the residential property to receive less heat than was appropriate. I accept the tenant's testimony that they cannot sufficiently control the heat to ensure appropriate heat for all levels in the house. However, I am satisfied the landlord attended to any deficit with the provision of heaters to the lower unit.

I find the landlord established the parties entered into a mutual agreement to end the tenancy; however it must be noted that only one of the 4 tenants to the tenancy agreement signed the agreement to end and under different circumstances would not be valid. I find that the evidence is that that the agreement to end may have also been entered into under duress. It must be noted the landlord is not relying on its enforcement to end the tenancy.

I find the landlord has not provided sufficient evidence to establish one of the occupants of the rental unit threatened to kill them. However, I accept the landlord's evidence the occupant threatened to break the landlord's phone on a different occasion, but that the attending police did not consider the situation sufficiently unlawful deserving of further police action. I accept the tenant's testimony that the utterance to break the landlord's phone was the result of ongoing frustration or acrimony between the parties.

I find that the balance of the landlord's issues not addressed in this Decision are not of the nature or of sufficient urgency appropriate pursuant to Section 56 of the *Act*.

As a result of all of the above, I find the landlord may feel they have cause to seek an early end to the tenancy pursuant to Section 56(2)(a) of the *Act*, however I do not find that there is *sufficient* evidence in this matter establishing that it would be unreasonable and unfair to the landlord and other occupants of the residential property to wait for a Notice to End tenancy issued under Section 47 to take effect. As a result, **I dismiss**

the landlord's application for an early end to the tenancy. However, the landlord is at liberty to issue the tenant a Notice to End Tenancy in accordance with the Act.

Conclusion

The landlord's application **is dismissed**. The tenancy continues subject to a valid Notice effective to end the tenancy.

This Decision is final and binding on both parties.

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: December 14, 2016

Residential Tenancy Branch