



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") to end the tenancy early and obtain an Order of Possession, and to recover the filing fee from the Tenant.

Both parties appeared for the hearing and provided affirmed testimony. The Landlord testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents by registered mail which had been signed for and received on January 4, 2017.

The Tenant confirmed receipt of the Landlord's Application and the Landlord's documentary evidence but submitted that those documents had been stolen by an unknown party who had broken into his rental unit and he had to obtain the call-in details for this hearing from the Residential Tenancy Branch. Based on the evidence before me, I find the Landlord effected service to the Tenant pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The Tenant confirmed that he had not provided any documentary evidence prior to this hearing.

The hearing process was explained to the parties and the Landlord had no questions. However, the Tenant stated that he had a brain injury and pursuant to his charter rights as a disabled person he may make profanities during this hearing. The Tenant failed to provide any supporting medical evidence of a brain injury that would impair him in this hearing and failed to appear for this hearing with an advocate which would have been expected if the Tenant knew of such a preexisting brain injury. I also note that during the hearing, the Tenant did not make any profanities.

Both parties were given a full opportunity to present relevant evidence on the issue of the tenancy ending, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) 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 this tenancy started on January 1, 2016 on a month to month basis. A written tenancy agreement was completed which shows the Tenant is responsible for paying \$575.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$287.50 at the start of the tenancy which the Landlord still retains.

The Landlord testified that in the last six months of this tenancy he has received a multitude of complains from neighbouring residents regarding verbal abuse by the Tenant.

The Landlord testified that on December 23, 2016, the caretaker of the building posted a written notice of entry to the rental unit door for December 28, 2016. The notice of entry was provided into evidence by the Landlord and states that entry is to be effected to the Tenant's rental unit between 10 a.m. and 12 p.m. The notice continues to state that the Tenant may be in attendance for the inspection and since the inspection is for maintenance purposes the Tenant may request any improvements during the inspection.

The Landlord testified the caretaker and the Property Manager started the maintenance inspection at 10:10 a.m. on December 28, 2016. When they knocked on the Tenant's door, there was no answer. The Landlord testified that they called out to the Tenant several times while they waited outside. As there was no response from the Tenant, they both entered the rental unit again shouting to inform the Tenant of the entry.

The Landlord testified that as the caretaker and property manager entered the rental unit, the Tenant was waiting behind the door and attacked them with pepper spray. The Landlord testified that the Tenant sprayed both of them in the face causing severe burns to their face. The police and the ambulance were called. The ambulance treated the property manager and the caretaker for burns to their face and the police arrested the Tenant for an assault with a weapon. The Landlord provided the police file reference number into evidence. The Landlord stated that in addition, a neighbouring resident had to be treated for breathing problems due to the pepper spray emissions.

The Landlord now seeks to end the tenancy because he states that the residents, the caretaker, and the building manager fear for their safety in the building. The Landlord testified that the police have laid criminal charges against the Tenant and the matter is before the criminal courts.

The Tenant was asked to respond to the Landlord's evidence. The Tenant demanded that I read to him the Landlord's written evidence as he was aware the Landlord had provided documentary evidence which was not before him.

The Tenant was informed that the Landlord had served the following evidence prior to the hearing: a written tenancy agreement (the details of which were undisputed by the parties); a dispute resolution Fact Sheet 114, which was not authored by the Landlord but is provided by the Residential Tenancy Branch to the parties; a copy of the Landlord's Application and Notice of Hearing documents; a copy of the Canada Post tracking receipt for the service of paperwork; the notice of entry to the rental unit; and the Landlord's written account of what occurred on December 28, 2016 which the Landlord presented during this hearing as oral evidence above.

The Tenant insisted that there was more evidence the Landlord had submitted. However, I reassured the Tenant that this was the only evidence from the Landlord that was before me. The Tenant demanded that I read him the Landlord's written account of what occurred on December 28, 2016. I informed the Tenant that the Landlord had already provided this evidence into oral testimony but that I would read this out again to him. The entire two page document was read out to the Tenant during the hearing.

The Tenant responded stating the Landlord had falsified the document detailing the December 28, 2016 incident and that it was not true. The Tenant disputed that he attacked the caretaker or the property manager with pepper spray stating that the pepper spray was used by the police who also stole items from his rental unit. The Tenant was evasive when I asked whether he had been arrested. The Tenant stated that the only thing he had to say in this respect was that the criminal matter was before the courts and that matter could only be decided by a court appointed judge. The Tenant stated that he had a long history of dispute with the caretaker as they were failing to complete repairs to the rental unit which were affecting his health.

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the landlord when the circumstances of a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end

tenancy to take effect, such as a notice given under Section 47 of the Act for cause. Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 56 of the Act.

I have carefully considered the evidence of both parties and I make the following findings in this dispute. I find the Landlord failed to provide insufficient evidence of the complaints that had been made to him by other residents in the building complaining of the Tenant's verbal abuse; neither did the Landlord make these complainants available to give direct testimony of this and be subject to cross examination.

I find that it is not acceptable for any party to exhibit verbal abuse towards another party, even though this may stem from a disability. However, the Landlord testified that these complaints came to him over a period of six months and therefore, I am confused as to why the Landlord did not address such serious complaints with the Tenant prior to the December 28, 2016 incident.

With respect to the December 28, 2016 incident, I find the Landlord relies heavily on his oral evidence and written submissions of the account as presented by him, which I am only able to conclude is hearsay evidence. I am very alarmed as to the allegation that the Tenant pepper sprayed the caretaker and the property manager since I find there is sufficient evidence before me to suggest the caretaker and the property manager were entering the rental unit legally after giving written notice. Therefore, if the Tenant had indeed sprayed the property manager and caretaker, which were known persons to the Tenant, then this would suggest that this tenancy should end early.

However, I am not satisfied that the Tenant did pepper spray the caretaker or the property manager since the Landlord failed to provide a copy of the police report to corroborate this. I find the police file number alone does not give sufficient details of what occurred from the police's view point.

In addition, the Landlord failed to provide sufficient evidence of the burns caused to the property manager or the caretaker, such as photographs. The Landlord did not make the caretaker and property manager available to provide direct testimony for this hearing or verify the Landlord's evidence with corroborating statements from these two parties or the additional resident that was affected by the pepper spray. This vital and necessary evidence in this case would have allowed me to make a finding on the balance of probabilities that the tenancy should end early.

Furthermore, while I find the Tenant to be evasive in his testimony during the hearing, I find that his submission that the pepper spray came from the police is plausible and

possible, especially if the police were involved in an altercation and arrest of the Tenant at the scene.

In this case, I find there is not sufficient evidence before me to conclusive prove that the Tenant pepper sprayed the caretaker and property manager on December 28, 2016. I find the Landlord's disputed evidence of this one incident and of alleged complaints from other residents in this building is weak and results in one party's word against the others. As a result, I am unable to end this tenancy early. However, the Tenant is cautioned to conduct himself appropriately in this tenancy and pursuant to the Act.

Conclusion

The Landlord has not met the burden to prove the tenancy should end early. Therefore, the Landlord's Application is dismissed without leave to re-apply and the tenancy will continue until such time it is 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.

Dated: January 25, 2017

Residential Tenancy Branch