



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the "Act") for an early end to this tenancy and an order of possession.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order ending this tenancy early?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on March 1, 2014 on a fixed term until February 28, 2015 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,029.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$500.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified that due to ongoing complaints by the tenant, the landlord has replaced the tenant's fridge at least four times. On February 23, 2017 the landlord attended the rental unit in response to the tenant's latest complaint about his fridge.

The landlord testified that it was during this visit that the tenant became frustrated, pushed the landlord and threw a frozen towel at him. The landlord testified that following this incident he contacted the police and obtained a police file number. The landlord seeks to end the tenancy based on this incident.

In response, the tenant testified that on February 23, 2017, the landlord knocked on his door, pushed him aside, looked at the fridge and advised him there was nothing wrong. The tenant testified that he put his hand on the landlord's shoulder and directed him to look at the fridge. The tenant cannot recall throwing a towel at the landlord but testified that if he did it would have been wet; not frozen. The tenant acknowledged being interviewed by police but states he was not charged.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an order of possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an order of possession under section 56, I need to be satisfied that the tenants have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails.

Based on the testimony of both parties and my review of the written evidence, I find that the landlord has failed to prove that the incident occurred as he described it. Furthermore even if the landlord had successfully proven the incident occurred just as he described, I find such an incident would not warrant an early end to tenancy.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

As I am satisfied that the landlord has not proven his claim, I dismiss the landlord's application for an early end to this tenancy.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: March 14, 2017

Residential Tenancy Branch