



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 pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession based on an Early End to Tenancy; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. She, along with her daughter who acted as agent for her mother, were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord explained that she personally served the tenant with an Application for Dispute Resolution, along with some evidentiary materials on July 5, 2017. Pursuant to sections 88, 89 & 90 of the *Act* the tenant is deemed to have been served with these materials on July 5, 2017.

Following introductory remarks, the landlord explained that a Mutual Agreement was entered in to between the parties on July 5, 2017. This notice was not submitted to the hearing. *Residential Tenancy Branch Rules of Procedure #3.19* grants me discretion on matters related to acceptance of late evidence. It says, "No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator." The landlord could not provide a compelling reason as to why this document was not submitted with her application for dispute resolution. I find that in the absence of extraordinary circumstances, the landlord cannot submit this document.

Analysis

The landlord provided undisputed testimony, that she was seeking an Order of Possession. The landlord said she strongly suspected that the tenant was engaged in illegal activities. No Notices to End Tenancy were provided to the hearing. The landlord

said that she attended the *Residential Tenancy Branch* and was told by the person with whom she spoke to that she should apply for an “Early End to Tenancy.”

There are some circumstances when it's necessary to end a tenancy as soon as possible – when waiting for a regular notice to take effect would be unreasonable or unfair. Applying for dispute resolution to end the tenancy early is required in these situations.

A landlord can apply for an order to end a tenancy without the usual notice if a tenant, (including their pets or guests) have done one of the following:

- Significantly interfered with or unreasonably disturbed another resident or the landlord
- Seriously endangered the safety, rights or interests of the landlord or another resident
- Engaged in illegal activity that has caused or could cause damage to the property, disturbed or threatened the security, safety or physical well-being of another resident, or endangered a lawful right or interest of another resident or the landlord
- Caused major damage to the property or put the landlord's property at considerable risk

While I do not dispute the landlord's oral testimony that the tenant may be engaging in illegal activity, I do not find that waiting for a regular notice to take effect would be unreasonable or unfair.

Section 44 of the *Act* explains ways a landlord can end a tenancy:

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

I find that the landlord has failed to demonstrate why the tenancy with the tenant could not be ended in accordance with one of the circumstances provided under the *Act*.

While the landlord provided undisputed testimony that she served an Application for Dispute Resolution, no Notice to End Tenancy was served on the tenant and the mutual agreement to end tenancy signed between the parties was not provided to the hearing. The landlord's application for an Early End of Tenancy applies only extremely rare cases where significant amounts of documentation and evidence exist. I do not find that the evidence submitted to the hearing is sufficient to justify an Early End to Tenancy.

Conclusion

I am dismissing the landlord's applications for an order of possession and for a return of the filing fee with 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: August 1, 2017

Residential Tenancy Branch