



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

- an order of possession for an early end to the tenancy pursuant to section 56;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Is the landlord entitled to an order of possession for an early end to the tenancy?

Is the landlord entitled to recover its filing fee?

Background & Evidence

The tenancy for this apartment unit began approximately fifteen years ago. The current landlord took over the property approximately one year ago.

The landlord applied for an early end to the tenancy on the grounds that the tenant verbally and physically threatened the live-in manager. In support of the application, the landlord's representative referred to the following documents submitted as evidence for this hearing:

- A letter issued to the tenant dated March 24, 2017 in regards to his refusal to leave the building during a bed bug treatment.
- A letter issued to the tenant dated April 3, 2017 regarding a late night disturbance in the building.
- An internal memo dated September 5, 2017 from the property manager regarding an incident of the tenant threatening the live-in manager.
- A letter issued to the tenant dated September 5, 2017 in regards to the tenant attacking the live-in manager and disturbing the peace.

- A letter issued to the tenant dated September 6, 2017 in regards to the tenant physically attacking the live-in manager for a second time after receiving his eviction notice.
- A written e-mail statement dated September 8, 2017 from a former tenant describing incidents in mid-July of the tenant verbally threatening her on a few separate occasions.

The tenant testified that he did not threaten the live-in manager. The tenant testified that he did not threaten any other tenant in the building, including the tenant that wrote the e-mail statement.

The tenant's representative submits the landlord has failed to establish cause to end the tenancy let alone an application for an early end to the tenancy. The tenant's representative submits the tenant has provided testimony under oath denying the threat and assault allegations against him. The landlord on the other hand is only relying on a witness statement and has not provided any testimony from the live-in manager who was allegedly threatened and assaulted. The landlord has also failed to provide any supporting evidence or witness testimony of the alleged threats from other tenants in the building as referred to by the landlord in the warning letters issued to the tenant.

Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant or a person permitted on the property by the tenant has:

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

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice for cause to take effect.

The e-mail statement submitted by the landlord refers to alleged incidents of threats made by the tenant in mid-July. The landlord did not produce the author of the e-mail statement as a witness. The tenant testified under oath denying the allegations. The landlord did not take any action in respect to this incident in mid-July when it allegedly happened.

Further, the landlord has failed to submit any witness testimony or supporting evidence in respect to the alleged verbal and physical threats made against the live-in manager. The live-in manager was not called upon as a witness for the hearing. The landlord's representative did not provide any specific details with respect to the alleged verbal and physical threats. The landlord's representative was relying solely on the letters issued to the tenant. The landlord did not present any evidence that the tenant was charged with uttering threats or assault or even whether a police report was filed. The tenant testified under oath denying all the allegations against him.

I find the landlord has not met the first part of the test and failed to provide sufficient evidence that it has cause to end this tenancy.

Accordingly, I dismiss the landlord's application for an early end to the 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 this application.

Conclusion

The landlord's application is dismissed.

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: October 30, 2017

Residential Tenancy Branch