



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

The landlord applies for early termination of the tenancy.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the evidence presented during this hearing show on a balance of probabilities that the circumstances call for an early termination of the tenancy under s.56 of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

The rental unit is a one bedroom basement suite in a house. The landlords rent the upper portion to other tenants.

The tenancy started in February 2017. There is a written tenancy agreement showing the tenant to be the only tenant and her twelve year old son to be an occupant. The monthly rent is \$900.00, due on the last day of the preceding month. The landlord holds a \$450.00 security deposit.

Ms. B.P. a witness for the landlord testifies that on December 17, 2017 she went with the landlord Mr. A.P. to the rental unit and from a distance away she heard the tenant's ex-husband at the tenant's door say to Mr. A.P. "I'm going to kill you." She did not see the tenant but assumes she was there.

She knows that the tenant's ex-husband does not live there.

She says the police have been to the rental unit "all through December."

The landlord Mr. A.P. testifies that on December 1 he attended at the premises to serve a ten day Notice for non-payment of rent to the tenant. She signed an acknowledgement of receipt. She did not pay the rent or dispute that Notice within the allowed five day period and so he filed a direct request for an order of possession on or about December 20. His request for a direct determination was thwarted by the fact that at about the same time, the tenant brought her own application to cancel the ten day Notice. Both those applications have been set to be heard together on February 8, 2018

Mr. A.P. says that on December 15 he called the tenant to see why she hadn't moved out. Her ex-husband, whom Mr. A.P. says does not live there, later called him and threatened to "burn the place down." Mr. A.P. reported it to the police.

He says that on December 17 he went to the rental unit to see if the tenant had moved out. He says that at that visit the tenant threatened to kill him. The police were called, apparently by the tenant.

Mr. A.P. testifies that he attended the premises on December 18 pursuant to a notice given to inspect the rental unit and that the tenant swore at him. He says there was a big confrontation and the tenant "took a swing" at him. The police were again called, again by the tenant.

Mr. A.P. wished to relate further incidents involving the tenant occurring after December 18. He was informed however that this application will rise or fall based on events as they existed at the time he made the application; December 18. He related a further confrontation with the tenant on December 20 when, he says, the tenant threatened him by saying she would not move out and again on December 21. Each time the tenant called the police.

The landlord Mr. B.P. testified about the tenant's ex-husband threatening to burn the house down. It is not clear that Mr. B.P. was a party to that conversation or was merely relating what his father, Mr. A.P. had told him. He says, without elaboration, that the tenant had threatened to charge the landlords with rape.

The tenant testifies that she was late with rent due to getting a job and that she offered the rent on December 20 but it was refused.

She says that on December 17 the landlord Mr. A.P. entered her rental unit without permission or notice and while she was asleep on a couch in the living room, and told her to "get the f*** out." She says he physically shook her. She called the police. Mr. A.P. continued to sit in the living room for awhile and then left.

She complains that during and inspection on December 18 the landlords rifled through her personal belongings.

She says the landlords or one of them wrongfully entered on two other occasions and that the landlords have been entering the rental unit to show it to prospective tenants.

She says the story about setting the house on fire is a lie.

Analysis

Section 56 of the *Act* provides:

56 (1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) 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

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(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 under section 47 [*landlord's notice: cause*] to take effect.

There is clearly a heated dispute between the parties. The central claims are that there was a threat to burn the house down and there was a threat to kill the landlord Mr. A.P.

In regard to the threat to burn the house down, that threat allegedly came from the tenant's ex-husband over the phone to Mr. A.P. The ex-husband is not a tenant nor an occupant of the rental unit. I find that threat, even if true, cannot be related back to the tenant. She cannot be held responsible for the utterances of her ex-husband. Though, if true, it is certainly a matter for the police, it cannot justify ending the tenant's tenancy.

In regard to the threat to kill the landlord Mr. A.P. I find that the threat has not been proven. The tenant denies it though it is not clear she was even there at the time on December 17. However Mr. A.P. says the threat was made by the tenant while Ms. B.P. who says she heard the threat, indicates it was made by the ex-husband. This significant difference in the landlord's evidence undercuts any certainty about the alleged threat.

Conclusion

I find that the landlords have not satisfied the evidentiary requirements of s.56 and I dismiss their application for an early end to this tenancy.

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: January 11, 2018

Residential Tenancy Branch