



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* (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 ground floor unit in a strata complex began August 1, 2015.

The landlord applied for an early end to the tenancy on the grounds that the tenant is allowing access to people into the building who are conducting criminal activity within the building. The landlord submits that as a result this has directly affected the safety of the building resulting in break-ins, theft, vandalism and drug activity. The landlord submits people were gaining access to the building through the tenant in order to engage in criminal activity that was occurring in an upper floor unit. In support of the application, the landlord referred to the following documents submitted as evidence for this hearing:

- An e-mail from another owner in the complex, who is also a neighbor of the tenant, to the strata council describing various dates and incidents observed by her.
- An e-mail from the strata council president who resides directly above the tenant.

The tenant disputed all of the incidents referred to by the landlord in the above e-mail documents. The tenant testified that he and his son who resides with him have never let anyone into the building other than their own guests. The tenant testified that the only interaction he has ever has with the upstairs unit which is the focus of the criminal activity was when the owner of the unit came to him to ask to borrow his cell phone.

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 One Month Notice for cause to take effect.

The e-mail statements submitted by the landlord refers to alleged incidents of the tenant supposedly allowing access to people in the building for the purposes of engaging in illegal activity in an upper unit. The landlord did not produce the authors of the e-mail

statements as witnesses. The tenant testified under oath denying all the hearsay allegations.

I find the landlord is relying solely on hearsay evidence which was adamantly denied by the tenant. 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.

Additionally, even if I found the landlord had established cause in this matter, which I do not, I find the landlord submitted insufficient evidence to demonstrate it would have met the second part of the test for 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. The landlord submitted insufficient evidence to suggest the tenant poses an immediate serious threat to the health and safety of the landlord or other occupants or to the landlord's property.

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: June 04, 2020

Residential Tenancy Branch